

CA20N
EAB
- H26

Ontario

ENVIRONMENTAL ASSESSMENT BOARD

VOLUME: 147

DATE: Thursday, October 12th, 1989

BEFORE: M.I. Jeffery, Q.C., Chairman

E. MARTEL, Member

A. KOVEN, Member



FOR HEARING UPDATES CALL (TOLL-FREE): 1-800-387-8810

FARR &
ASSOCIATES
REPORTING INC.

(416) **482-3277**

2300 Yonge St., Suite 709, Toronto, Canada M4P 1E4

HEARING ON THE PROPOSAL BY THE MINISTRY OF NATURAL
RESOURCES FOR A CLASS ENVIRONMENTAL ASSESSMENT FOR
TIMBER MANAGEMENT ON CROWN LANDS IN ONTARIO

IN THE MATTER of the Environmental
Assessment Act, R.S.O. 1980, c.140;

- and -

IN THE MATTER of the Class Environmental
Assessment for Timber Management on Crown
Lands in Ontario;

- and -


IN THE MATTER OF a Notice by the
Honourable Jim Bradley, Minister of the
Environment, requiring the Environmental
Assessment Board to hold a hearing with
respect to a Class Environmental
Assessment (No. NR-AA-30) of an
undertaking by the Ministry of Natural
Resources for the activity of timber
management on Crown Lands in Ontario.

Hearing held at the Ramada Prince Arthur
Hotel, 17 North Cumberland St., Thunder
Bay, Ontario, on Thursday, October 12th,
1989, commencing at 8:30 a.m.

VOLUME 147

BEFORE:

MR. MICHAEL I. JEFFERY, Q.C.	Chairman
MR. ELIE MARTEL	Member
MRS. ANNE KOVEN	Member



Digitized by the Internet Archive
in 2023 with funding from
University of Toronto

<https://archive.org/details/31761116521402>

A P P E A R A N C E S

MR. V. FREIDIN, Q.C.)	
MS. C. BLASTORAH)	MINISTRY OF NATURAL
MS. K. MURPHY)	RESOURCES
MS. Y. HERSCHER)	
MR. B. CAMPBELL)	
MS. J. SEABORN)	MINISTRY OF ENVIRONMENT
MS. B. HARVIE)	
MR. R. TUER, Q.C.)	ONTARIO FOREST INDUSTRY
MR. R. COSMAN)	ASSOCIATION and ONTARIO
MS. E. CRONK)	LUMBER MANUFACTURERS'
MR. P.R. CASSIDY)	ASSOCIATION
MR. H. TURKSTRA	ENVIRONMENTAL ASSESSMENT
	BOARD
MR. E. HANNA)	ONTARIO FEDERATION OF
DR. T. QUINNEY)	ANGLERS & HUNTERS
MR. D. HUNTER)	NISHNAWBE-ASKI NATION
MS. N. KLEER)	and WINDIGO TRIBAL COUNCIL
MR. J.F. CASTRILLI)	
MS. M. SWENARCHUK)	FORESTS FOR TOMORROW
MR. R. LINDGREN)	
MR. P. SANFORD)	KIMBERLY-CLARK OF CANADA
MS. L. NICHOLLS)	LIMITED and SPRUCE FALLS
MR. D. WOOD)	POWER & PAPER COMPANY
MR. D. MacDONALD	ONTARIO FEDERATION OF
	LABOUR
MR. R. COTTON	BOISE CASCADE OF CANADA
	LTD.
MR. Y. GERVAIS)	ONTARIO TRAPPERS
MR. R. BARNES)	ASSOCIATION
MR. R. EDWARDS)	NORTHERN ONTARIO TOURIST
MR. B. McKERCHER)	OUTFITTERS ASSOCIATION

APPEARANCES: (Cont'd)

MR. L. GREENSPOON)	NORTHWATCH
MS. B. LLOYD)	
MR. J.W. ERICKSON, Q.C.)	RED LAKE-EAR FALLS JOINT
MR. B. BABCOCK)	MUNICIPAL COMMITTEE
MR. D. SCOTT)	NORTHWESTERN ONTARIO
MR. J.S. TAYLOR)	ASSOCIATED CHAMBERS
	OF COMMERCE
MR. J.W. HARBELL)	GREAT LAKES FOREST
MR. S.M. MAKUCH)	
MR. J. EBBS	ONTARIO PROFESSIONAL
	FORESTERS ASSOCIATION
MR. D. KING	VENTURE TOURISM
	ASSOCIATION OF ONTARIO
MR. D. COLBORNE)	GRAND COUNCIL TREATY #3
MS. S.V. BAIR-MUIRHEAD)	
MR. R. REILLY	ONTARIO METIS &
	ABORIGINAL ASSOCIATION
MR. H. GRAHAM	CANADIAN INSTITUTE OF
	FORESTRY (CENTRAL
	ONTARIO SECTION)
MR. G.J. KINLIN	DEPARTMENT OF JUSTICE
MR. S.J. STEPINAC	MINISTRY OF NORTHERN
	DEVELOPMENT & MINES
MR. M. COATES	ONTARIO FORESTRY
	ASSOCIATION
MR. P. ODORIZZI	BEARDMORE-LAKE NIPIGON
	WATCHDOG SOCIETY

APPEARANCES: (Cont'd)

MR. R.L. AXFORD	CANADIAN ASSOCIATION OF SINGLE INDUSTRY TOWNS
MR. M.O. EDWARDS	FORT FRANCES CHAMBER OF COMMERCE
MR. P.D. McCUTCHEON	GEORGE NIXON
MR. C. BRUNETTA	NORTHWESTERN ONTARIO TOURISM ASSOCIATION

I N D E X O F P R O C E E D I N G S

<u>Witness:</u>	<u>Page No.</u>
<u>JOHN McNICOL,</u>	
<u>FRANK D. KENNEDY,</u>	
<u>J. JOSEPH CHURCHER,</u>	
<u>RICHARD WILLIAM GROVES,</u>	
<u>HARTLEY MULTAMAKI,</u>	
<u>ALBERT BISSCHOP,</u>	
<u>ROGER W. DAVISON,</u>	
<u>ROBERT THOMAS FLEET, Resumed</u>	25170
 Continued Cross-Examination by Mr. Lindgren	25170
Cross-Examination by Mr. Cosman	25278
Cross-Examination by Mr. Cassidy	25303
Cross-Examination by Mr. Edwards	25318

(v)

I N D E X O F E X H I B I T S

<u>Exhibit No.</u>	<u>Description</u>	<u>Page No.</u>
894	Memorandum from Red Lake District Manager to MOE re: jack pine budworm spray program.	25171
895A	Document package submitted by Forests for Tomorrow containing assorted letters and memoranda between Marceau Lake Cottagers Association, MOE and MNR.	25252
895B	Supplementary document package submitted by Ministry of Natural Resources in relation to Exhibit. 895A.	25252
896	Copy of letter from Big Pic Plan dated June 3, 1987.	25353

1 ---Upon commencing at 8:30 a.m.

2 THE CHAIRMAN: Good morning, ladies and
3 gentlemen. Please be seated.

4 Mr. Lindgren, are you ready?

5 MR. LINDGREN: Yes, Mr. Chairman.

6 JOHN McNICOL,
7 FRANK D. KENNEDY,
8 J. JOSEPH CHURCHER,
9 RICHARD WILLIAM GROVES,
10 HARTLEY MULTAMAKI,
11 ALBERT BISSCHOP,
12 ROGER W. DAVISON,
13 ROBERT THOMAS FLEET, Resumed

14 CONTINUED CROSS-EXAMINATION BY MR. LINDGREN:

15 Q. Mr. Groves, I would like to firstly
16 ask you a few questions and it concerns the jack pine
17 budworm spray program that you confirmed took place in
18 1987 on the Red Lake Crown Management Unit. I believe
19 that yesterday you did confirm that such a program was
20 carried out?

21 MR. GROVES: A. Yes, I did.

22 Q. Can you also confirm that this
23 program amounted to approximately 27,000 hectares of
24 land that were sprayed?

25 A. No, I can't confirm it, I wasn't in
the district at the time.

Q. Okay. Mr. Multamaki, were you in the
district at the time?

1 MR. MULTAMAKI: A. Yes, I was in the
2 district at the time that the 1986 jack pine budworm
3 project was undertaken. I am not sure about 1987, as I
4 understand it there was no spray that year.

5 Q. In 1987?

6 A. In 1987.

7 MR. LINDGREN: Mr. Chairman, I would like
8 to file as the next exhibit a memorandum dated March
9 16th, 1987 from the Red Lake District Manager to
10 Ministry of the Environment with respect to the 1987
11 jack pine budworm spray program.

12 THE CHAIRMAN: Exhibit 894.

13 MR. LINDGREN: (handed)

14 THE CHAIRMAN: Thank you.

15 ---EXHIBIT NO. 894: Memorandum from Red Lake District
16 Manager to MOE re: jack pine
budworm spray program.

17 MR. LINDGREN: Q. Can I ask you, Mr.
18 Groves, to turn to the third page of this document and
19 this is a copy of the Form 5 application that was
20 submitted to the Ministry of the Environment.

21 MR. MULTAMAKI: A. Perhaps before we
22 move on I could clarify, when I said '87, I meant '88.
23 I'm sorry, I lost a year there, that can happen this
24 early in the morning I guess. So it was 1988 that I am
25 not aware of. 1987 I was in the district and, in fact,

1 there was a spray program.

2 Q. Okay, thank you. Then perhaps the
3 next few questions could be directed towards you. Can
4 I ask you to direct your attention to, first of all,
5 box No. 2, name of exterminator and other particulars.
6 Why has that box not been completed?

7 MR. CHURCHER: A. Perhaps I can assist
8 you with that one, Mr. Lindgren.

9 Q. Certainly.

10 A. It's very common and I believe in the
11 procedure, in fact, it stipulates at the time that the
12 Form 5 is submitted to MOE quite often the name of the
13 exterminator is not known at that point in time, the
14 tendering process has not been completed and the award
15 has not been made and so quite often that box is left
16 blank. When the tender has been awarded to a
17 particular company, then MOE is notified at that time
18 and that box is filled in.

19 Q. Okay. Thank you, Mr. Churcher.
20 Actually I am more interested in box No. 4 which is the
21 lot, concession and township in which the spray is to
22 occur. And I am wondering why that has been left
23 blank?

24 MR. MULTAMAKI: A. I can probably answer
25 that, in the fact that you are dealing with Red Lake

1 and the areas being sprayed most likely had no lot,
2 concession or township i.e., all they had were base map
3 numbers.

4 Q. Then perhaps why weren't the base map
5 numbers provided? My concern is: How is anybody
6 looking at this going to determine where in Red Lake
7 District the spraying is going to occur other than the
8 fact it's 27,000 hectares somewhere within the
9 District.

10 MR. GROVES: A. I believe it's on the
11 front page, you see project descriptions are attached,
12 and the project descriptions describe the base map and
13 the specific areas in which the spray will take place
14 so someone could find out.

15 Q. Okay. Those project descriptions,
16 actually the covering letter itself and the attachments
17 are submitted to the regional office of the Ministry of
18 the Environment. On the second page of this document
19 we find an memorandum to the EA Branch that encloses
20 only the photocopy of Form 5.

21 I assume that no projection descriptions,
22 discussion of program options, public review and
23 consultation process are also provided to the EA
24 Branch. All the EA Branch gets is the Form 5; is that
25 the case?

1 MR. CHURCHER: A. That is correct, that
2 was my direct evidence as well. That is what is
3 required in the procedure, MOE Branch in Toronto gets a
4 copy of the Form 5 and a copy of the covering letter to
5 the regional office.

6 Q. Mr. Churcher, you are probably aware
7 that a number of people, including my clients, won't
8 have an opportunity to attend an open house in
9 northwestern Ontario, they won't have an opportunity to
10 visit the regional office to determine the exact
11 location of the spray blocks.

12 So I am wondering if it would be
13 advisable to also send to the EA Branch some sort of
14 identification perhaps in the form of a map of these
15 spray blocks?

16 A. That possibility was discussed at
17 various times and some of the larger spray programs
18 where we were dealing with 26 or 30 different projects
19 we did not feel it was advisable and, as I understand
20 it, MOE did not feel it was necessary that they be
21 saddled with a number of maps and aerial photographs
22 from 30 different spray projects across Ontario.

23 For those few individuals in Toronto that
24 were interested in what exactly was going to be
25 happening in Red Lake District or any other district in

1 northern Ontario, it would seem more appropriate that
2 they write a letter to the district manager of Red Lake
3 or whatever the district would be and request the
4 specific information that they were interested in, be
5 it an entire -- a copy of the project description or a
6 specific map or the location of a specific spray block.

7 Q. Just one final question on this
8 document. Would you describe a 27,000 hectare program
9 as a large program, a medium sized program or what?

10 A. In Ontario I would call that a
11 reasonably large program.

12 Q. Okay, thank you. Mr. Fleet, I would
13 like to turn to you now and ask you a few questions
14 about the evidence that you gave with respect to the
15 review and approval process.

16 Now, I assume, Mr. Fleet, that you are
17 familiar with the Baskerville audit?

18 MR. FLEET: A. I have some familiarity
19 with that, yes.

20 Q. What I propose to do is take you to
21 some of the comments that he made with respect to the
22 review process that he looked at and I am going to ask
23 you to indicate what specific changes have been
24 implemented by the Ministry to this date to address
25 some of his concerns, and I would like to start by

1 referring you to page 81 of the Baskerville Report.

2 In the first full paragraph in the middle
3 of the page Dean Baskerville writes:

4 "The approval process for management
5 plans is so administratively oriented and
6 so in search of administrative
7 consistency that substantial technical
8 errors slip through readily."

9 And then he goes on to list five
10 substantial technical errors, or seven actually that he
11 found. And skipping down to the last line he
12 indicates:

13 "The point of this list is that the
14 approval process allows significant
15 management issues to slip by in error
16 largely because of a preoccupation with
17 the form of the presentation rather than
18 the technical content of the plan."

19 So my first question to you, Mr. Fleet,
20 is: What specific changes in the review process have
21 been implemented by the Ministry to address that
22 concern and to ensure that those kind of errors no
23 longer occur?

24 A. I think that the single best
25 initiative that MNR undertook to respond to some of the

1 criticisms in the Baskerville audit was the development
2 of the technical bulletins and the administrative
3 procedure which outlined our expectations of what would
4 be pursued in the review of a timber management plan.

5 Prior to the development of these
6 bulletins which, of course, are still draft are being
7 tested in the field now, there was minimal technical
8 direction to plan reviewers with respect to exactly
9 what it is that they should be looking for in the
10 review of a timber management plan. So that initiative
11 is perhaps the single largest.

12 Q. Are there any other initiatives that
13 come to mind?

14 A. We have also in the province a
15 sub-committee, if you would, of a policy committee -
16 that's a standing committee within MNR - and that
17 particular sub-committee, although I wasn't involved
18 during the Baskerville audit, it evolved in response
19 to -- in terms of its role, it seemed to evolve in
20 response to some of the Baskerville criticisms in terms
21 of becoming a forum for field input to higher levels
22 and, conversely, higher level direction to the field
23 with respect to many timber management planning
24 concerns and subjects including, of course, management
25 plan review and I believe it was through that committee

1 that, for example, we recognized the need for the
2 bulletins.

3 We also through that committee initiated,
4 for example, the timber management planning training
5 efforts. So there were a variety of initiatives of
6 that committee.

7 MRS. KOVEN: Mr. Fleet, what was the
8 first initiative you mentioned?

9 MR. FLEET: The first initiative I
10 mentioned was the development of both the
11 administrative procedure which I took you through in my
12 lead evidence and, additionally, the three bulletins
13 for the review of timber management plans; the
14 district, the region and main office.

15 MR. LINDGREN: Q. Can you advise me if
16 that committee still exists?

17 MR. FLEET: A. Yes, it does.

18 Q. Okay. Now, returning to the
19 bulletins that you have just referred to, these are
20 reproduced starting at page 252 of the witness
21 statement.

22 I don't intend to take you through them,
23 but I do note that they are dated 1988-1989 and they
24 are marked as draft. Is it possible for these
25 documents to change before they are finalized by the

1 Ministry -- or by the Ministry of Natural Resources?

2 A. Absolutely. I think that one of the
3 reasons that they are stamped draft is because they are
4 the best efforts of that committee and there has been
5 some field testing of them, but my understanding is
6 that at this point in time they're being very
7 rigorously tested in the field.

8 If you would, they might be considered --
9 well, the draft prototypes and based on a year of
10 experience with them, we would hope to move towards a
11 final and hopefully by then we might also be finished
12 the hearing and be able to incorporate some of the
13 outcomes of the hearing.

14 THE CHAIRMAN: Dream on.

15 MR. FLEET: I'm trying to be positive.

16 MR. LINDGREN: Q. Well, along those
17 lines, Mr. Fleet, is it possible for these bulletins to
18 change after the Board renders its decision? Is it
19 possible that they won't be finalized before the Board
20 renders its decision?

21 MR. FLEET: A. Within the Ministry
22 framework we have policies, procedures and bulletins
23 and technical bulletins are just that, bulletins, and
24 they are expected to change on a regular basis to be
25 kept current.

1 We have bulletins on other subject
2 matters, for example, with respect to licensing or
3 stumpage rates that are the same number and the same
4 title which are updated annually as a regular feature
5 of those bulletins. So, yes, I would say they could be
6 expected to change.

7 Q. And this is after the Board renders
8 its decision?

9 A. I see no reason why they couldn't be
10 changed then.

11 Q. So the components of the district,
12 regional, main office review as set out in the
13 bulletins could change and could differ from what's
14 before the Board right now?

15 A. I would suggest that if they do
16 change it would probably be in response to the decision
17 of the Board.

18 Q. Okay. The final paragraph on page
19 81, the final line starts...

20 A. Page 81?

21 Q. Page 81:

22 "The approval process for management
23 plans has evolved into a proliferation of
24 paper."

25 I don't think it's necessary to read the

1 rest of the paragraph into the record. I am wondering
2 how the Ministry's new review and approval process has
3 ended this proliferation of paper that Dean Baskerville
4 has referred to? If the Lac Seul example is any
5 example, I would suggest to you that the paper war is
6 still continuing?

7 THE CHAIRMAN: You can't have it both
8 ways though; can you, Mr. Lindgren? Can you have
9 traceable decisions without paper?

10 MR. LINDGREN: Well, we can certainly put
11 reasonable limits on the amount of paper that one has
12 to wade through to trace the decision through.

13 MR. FREIDIN: Well, do you want them not
14 to comment on the -- no, fine.

15 MR. FLEET: If I could respond to that
16 particular paragraph. My understanding with respect to
17 what Dean Baskerville is addressing there, first of
18 all, I wouldn't deny that there is still a
19 proliferation of paper and I think we have demonstrated
20 that well by including the Lac Seul review as an
21 example of a timber management plan review.

22 That particular paragraph, it's my
23 understanding that the former practice with respect to
24 review and approval was that there was a plan submitted
25 and there was a review and the final plan generally

1 that would end up being received would have
2 approximately that amount of documentation literally
3 stapled into the front with respect to the changes that
4 should be required; in other words, that plan was
5 approved with all the changes outlined at the front
6 instead of what we now do, which is indicate all the
7 required changes, have the plan author incorporate
8 those changes right into the document and then have the
9 document a stand alone approved plan.

10 This paragraph refers to a proliferation
11 of paper which became the plan and a bunch of caveats
12 to the plan which became the approval. We approve now
13 a single document with no pages stapled at the front in
14 terms of additional qualifications to that approval.

15 MR. LINDGREN: Q. The final comment that
16 Dean Baskerville made that I would like to direct your
17 attention to is found at page 83 and it's the second
18 full paragraph. The last line indicates that:

19 "The OMNR review process for management
20 plans concentrates more on the
21 presence and form of items than on the
22 quality with which these are reasoned
23 than on the internal technical
24 consistency of the plan."

25 Would you agree with me, Mr. Fleet, that

1 the tone and the content of the Lac Seul review that
2 you have provided indicates that this still may be a
3 valid concern today?

4 MR. FLEET: A. I would agree that there
5 are elements in that Lac Seul review with respect to
6 form and content that had to be addressed, but I would
7 suggest too that there are considerable elements of
8 content with respect to proper management of the
9 resource. The two had to be addressed and are also
10 included in that review.

11 MR. LINDGREN: Could I have a moment, Mr.
12 Chairman?

13 Q. I would like to refer you now to the
14 witness statement and, in particular, 231 of Exhibit
15 813A. Under the first bullet under District Review,
16 the author indicates that:

17 "Reviewers ensure that timber management
18 activities have been planned in
19 accordance with sound forestry practices,
20 that other values have been considered,
21 and that public concerns have been
22 addressed."

23 I have two questions flowing from that,
24 Mr. Fleet. Firstly, what does the phrase 'sound
25 forestry practices' mean and how precisely do the

1 foresters ensure that these practices have been
2 followed?

3 MR. FLEET: A. I think with respect to
4 sound forestry practices as used in this particular
5 bullet we are talking about, first and foremost,
6 maintenance of the productivity of the forest and so,
7 therefore, that would imply our continued ability to
8 provide a supply of timber. And in addition, to me
9 maintenance of the productivity of the forest implies
10 reasonable efforts to conduct business in an
11 environmentally sound manner.

12 In terms of the district review, it is a
13 multi-disciplinary review and so with respect to timber
14 management activities being planned in accordance with
15 sound forestry practices that also would mean to me
16 that the reviewers would look and very carefully, for
17 example, review the area of concern prescriptions that
18 have been developed to ensure that the timber practices
19 would not be -- where possible, the timber practices
20 would not be negatively impacting on identified values.

21 And if you could, please repeat the
22 second part of your question.

23 Q. I think you have partially addressed
24 it, but I would like to return to the first part of
25 your answer. You have indicated that one of the

1 concerns of the reviewers is the long-term productivity
2 of the site and maintenance of that long-term
3 productivity.

4 A. Yes.

5 Q. Are you telling me then that the
6 reviewers are looking for some form of analysis in the
7 plan relating to such long-term impacts as nutrient
8 cycling and hydrological cycling and those sorts of
9 matters?

10 A. I don't think we do that on a
11 unit-by-unit basis. They are looking really for
12 maintenance of the age-class structure of the forest
13 and the reintroduction of -- on a harvested hectare,
14 but on a forest level, the reintroduction on a
15 harvested level of a renewed hectare.

16 In terms of productivity of the forest
17 that is more the level that I am describing
18 productivity of the forest at with respect to the
19 review of a timber management plan.

20 Q. Mr. McNicol, if I could turn briefly
21 to you. Perhaps you could turn to page 233 of the
22 witness statement as well and in the second full
23 paragraph under the heading Main Office Review it's
24 indicated that:

25 "The major focus of timber management

1 plan review by main office involves
2 aspects which are provincial in nature
3 such as wood supply and wood
4 disposition."

5 Now, Mr. McNicol, you may recall on
6 September 21st the Board expressed some concern that
7 there may be a public perception that main office is
8 predominantly or exclusively devoted to timber issues
9 as opposed to non-timber issues and non-timber values.

10 And as part of your response to that
11 concern you have indicated that, in your present
12 position as provincial coordinator for the application
13 of timber management guidelines such as moose, tourism
14 and fish habitat, you have consulted with regional
15 specialists about some of these concerns.

16 Do you recall that testimony, Mr.
17 McNicol?

18 MR. McNICOL: A. I do.

19 Q. Can you confirm for me that you do
20 not check every timber management plan to ensure that
21 they are consistent with other non-timber objectives or
22 programs?

23 A. The question refers to me personally
24 checking each plan?

25 Q. That's correct.

1 A. You would be correct in that.

2 Q. Where does that kind of review occur
3 at main office, or does it?

4 A. The review that you are speaking of
5 would be a review by outdoor recreational, wildlife
6 branch or fisheries branch of each plan. You are
7 asking where that takes place?

8 Q. That's correct.

9 A. It doesn't take place and I think
10 that has already been indicated.

11 However, part of the answer that I didn't
12 give and part of the rationalization for their not
13 being that kind of review in the outdoor rec group is
14 the fact that we are looking at the guidelines, if you
15 will, as being a distillate of the policies and
16 objectives of wildlife branch.

17 The execution and the successful
18 completion, if you will, of the direction that is given
19 by head office through policy and procedure as
20 evidenced by the guidelines, it's going to produce the
21 product that we are looking for in terms of our
22 objectives.

23 So when we are looking at proper
24 application of the guidelines, first we are looking to
25 the district biologist to ensure that they do a good

1 job of it, but to check on them, the regional
2 specialists are reviewing. They have the local
3 flavour, if you will, the local milieu that those
4 guidelines are being applied within. So they are best
5 to ascertain whether the districts, through the timber
6 management planning teams, are doing a good job of
7 implementing the guidelines.

8 I would suggest that head office, because
9 they are remote and removed from those particular
10 locations, would have a hard time in determining a lot
11 of the local factors that enter into the way guidelines
12 are applied in a particular jurisdiction.

13 Q. I have two questions flowing from
14 your answer. Firstly, can you confirm for me that you
15 do not review every timber management plan to ensure
16 that the guidelines are in fact properly applied?

17 THE CHAIRMAN: He already said that, I
18 believe.

19 MR. LINDGREN: No, the first question
20 was: He doesn't check to ensure that other non-timber
21 programs or objectives are -- that the plans are
22 consistent with those other non-timber objectives and
23 programs. That was the first instance.

24 Q. The second question is: Do you check
25 to ensure in every plan that the guidelines have been

1 properly applied?

2 MR. FREIDIN: You are saying you again,
3 that is Mr. McNicol personally?

4 MR. LINDGREN: Q. In your present
5 capacity.

6 MR. McNICOL: A. No, I do not check
7 every plan to ensure that the guidelines have been
8 applied properly. The way my audit, if you will, takes
9 place is that I depend on the regional specialist with
10 direction from me as to what to be looking for in their
11 review, and with their knowledge of proper guideline
12 application, for them to point me to where they see
13 problems with the way guidelines have been applied by a
14 particular timber management planning team and together
15 we discuss whether there indeed is a problem and, if
16 there is, measures to correct it.

17 Q. And the other question that I have
18 from your answer is this: You have indicated that main
19 office review really can't or shouldn't occur with
20 respect to these non-timber objectives because they're
21 a little bit too far removed from the local scene, they
22 don't have the same appreciation of the local factors
23 that the district review -- or the regional reviewers
24 have.

25 My question to you is: Given that the

1 main office is, I guess, largely or wholly responsible
2 for the tone and direction of the non-timber objectives
3 and the non-timber programs, wouldn't it be advisable
4 to have them undertake some sort of review to ensure
5 that there is some sort of consistency among the plans
6 in terms of protecting or safeguarding those other
7 programs and objectives?

8 A. I would suggest that, yes, and
9 properly part of their function is an audit function
10 and on a periodic basis I would suggest that, yes, that
11 would be a proper role for them to fulfill, but
12 certainly not on an annual basis, in my opinion.

13 MR. FLEET: A. Mr. Lindgren, if I could
14 just add to that. There may be some misunderstanding
15 in the room with respect to the main office timber
16 review of a timber management plan. It is very much a
17 long-term wood supply review. The rationale behind
18 that is because with respect to long-term wood supply
19 and the activities on any given management unit and the
20 ability of a management unit to provide a long-term
21 wood supply, the effects of our inability, if you
22 would, to not provide that long-term wood supply are
23 often several hundred miles from the management unit in
24 question.

25 For example, management units in Sioux

1 Lookout provide wood to Thunder Bay and that's four or
2 five hours away. Main office -- I don't think that it
3 would, in all cases, be fair to suggest that that
4 similar type of provincial level perspective with
5 respect to wildlife management might be appropriate at
6 main office.

7 In addition to that, I would like to add
8 that we do not, in our review of timber management
9 plans at main office, review the application of, for
10 example, the timber silvicultural guides. That is too
11 done at either the regional or the district level.
12 That type of compliance, if you would, in terms of a
13 main office role is also dealt with through program
14 audits.

15 And if I can go back for a minute, if you
16 will permit, to the question with respect to site
17 productivity, the discussion of guidelines twiggled
18 another thought. I was thinking in terms of: Do unit
19 foresters go out and collect soil samples and send them
20 to laboratories? And in that sense, no, we don't
21 measure site productivity.

22 But we do, through district and regional
23 review of the timber management plan, review the
24 silvicultural ground rules and their compliance with
25 the silvicultural guides, and it is the position that

1 the silvicultural guides are designed on the basis of
2 capabilities of the site and the maintenance of site
3 productivity. So through that review then, at a more
4 detailed level than I was suggesting, there is indeed a
5 measure of review of site productivity.

6 Q. Okay, thank you. I would like to
7 return briefly to the Baskerville audit and, in
8 particular, I would like to refer I believe probably
9 Mr. Kennedy to page 76, page 76 of the Baskerville
10 audit.

11 And, in particular, I am interested in
12 the issue of accountability and responsibility for
13 decisions in the plan. Now, the first sentence under
14 the heading: Who is Responsible, there is a statement
15 to the effect that:

16 "For management to be effective there
17 must be well defined responsibility and
18 accountability."

19 I take it that you would agree with that
20 principle, Mr. Kennedy?

21 MR. KENNEDY: A. Yes, I would.

22 Q. Then throughout the rest of page 76
23 and on to the top of page 77 Baskerville goes on to
24 note his findings on accountability and responsibility.
25 And then in the second full paragraph on page 77 he

1 indicates that:

2 "The responsibility for quality of
3 management plans in the OMNR is
4 dispersed perhaps to the degree that
5 where everyone is responsible no one is
6 responsible. The dispersed
7 responsibility has resulted in
8 considerable inflexibility. There is a
9 prevalent attitude that all players
10 must be involved at all times, not
11 necessarily to get their technical input
12 because this seemed to be seldom the
13 case, but rather to get assurance that
14 the book is being followed."

15 And then skipping down to the last line
16 of that paragraph:

17 "The pervasive attitude was that as long
18 as the rules (e.g., public exposure) were
19 followed the job has been done and any
20 responsibility has been fulfilled."

21 My Kennedy, my question is this: What
22 changes have been implemented by the MNR that
23 specifically address this concern? Is this concern
24 valid or is it no longer valid?

25 MR. KENNEDY: A. I don't think the

1 concern is valid, no. I think that what we have done
2 is in the incorporation of the new Timber Management
3 Planning Manual we have made it quite clear that there
4 is a plan author, that individual is responsible for
5 the production of the plan using the planning team
6 approach, but I think it's also wise to point out that
7 in any hierarchical organization that there will be
8 different levels of responsibility and accountability.

9 In the case of the Ministry of Natural
10 Resources organizational structure, which we have put
11 before the Board in Panel 1, we do have a district,
12 region and main office structure in place and that that
13 differing levels of responsibility and accountability
14 to some could seem to be confusing, but clearly the
15 accountability starts with the unit forester that is
16 responsible for the production of the plan, and then
17 various other aspects that are related specifically to
18 the plan and the function of timber management
19 responsibility would be shared by others in the
20 organization.

21 MR. FLEET: A. Mr. Lindgren, with
22 respect to a specific change, just to add to what Mr.
23 Kennedy has said, it was not uncommon prior to the new
24 Timber Management Planning Manual and process that a
25 timber management plan that would, for example, go to

1 the region for review as a result of a district review
2 would arrive with often more than an entire page of
3 signatures of each of the program supervisors, perhaps
4 the district biologist and so forth.

5 And so with respect to accountability
6 anyway I think that is perhaps partially where Dean
7 Baskerville's criticism was directed, and with respect
8 to the significant change it is, as Mr. Kennedy pointed
9 out, now with respect to the submission of a timber
10 management plan you have the plan author signature and
11 then you have the recommendation of the district
12 manager to approve the plan.

13 And if you recall in my evidence, I
14 referred on page 264 of this big book 813A, there is a
15 sub-paragraph titled: Recommendation, and in that
16 paragraph there is a fairly clear statement to the
17 district manager exactly what his approval -- his
18 recommendation for approval of that plan means.

19 So in terms of a change since Dean
20 Baskerville's audit, there has been some efforts on the
21 part of the Ministry to define accountability.

22 Q. Let me just pursue that for a moment.
23 On page 235 of the witness statement - it's not
24 necessary to refer to it, I don't think - but it's
25 indicated at that page that the final list of required

1 alterations to the draft TMP:

2 "...this stage includes consideration of
3 any public submissions or suggested
4 alterations that are received during the
5 public review period."

6 Now, who --

7 MR. FREIDIN: Sorry, where are you
8 referring to?

9 MR. LINDGREN: It's page 235 of the
10 witness statement, first full paragraph, second
11 sentence.

12 Q. Now, who on the planning team
13 ultimately decides if a public submission or if a
14 particular public submission should be reflected or
15 incorporated into a plan. Is this a consensus decision
16 or is it simply a decision of the plan author?

17 MR. FLEET: A. No. Depending on the
18 particular public input, it's very much a planning team
19 function. Ultimately the decision is, particularly if
20 it's a contentious issue, the decision would be that of
21 the district manager.

22 In the planning team environment, as you
23 sit around the table, it's often the person on the team
24 of the particular discipline that would be providing
25 the most input into the final decision. For example,

1 if it was a biology decision, it would be largely the
2 input of the district biologist versus the plan author
3 who would be the forester, and it would depend on the
4 issue.

5 Q. I am still not clear on who would
6 actually be accountable for that decision. Is it the
7 plan author, the planning team, the district manager or
8 the reviewers who ultimately approve the plan?

9 A. I would suggest that it would be both
10 the -- be ultimately responsible for the decision?

11 Q. Correct.

12 A. It would be both the plan author, the
13 district manager and the other two approval levels for
14 that timber management plan. And I say that because
15 they put their signatures to a page and that endorses,
16 if you would, and agrees and approves those decisions.

17 Q. If I could ask you to return to Dean
18 Baskerville's audit page 78. The first line on that
19 page indicates that:

20 "Major changes are needed in the
21 definition of responsibilities and
22 accountabilities if consistently adequate
23 resource management and particularly
24 timber management is to be achieved."

25 And it goes on to indicate that:

1 "The management unit should be designated
2 as the key level for all management
3 issues."

4 What specific major changes has the MNR
5 implemented to address this particular concern other
6 than the bulletin provision that you have just referred
7 us to?

8 MR. KENNEDY: A. If I am not mistaken, I
9 believe Dean Baskerville is referring to a variety of
10 disciplines and a variety of planning issues at this
11 point, given the previous paragraphs, and I would
12 suggest to you that the biggest change Natural
13 Resources has undertaken is the provision of planning
14 teams to ensure that there is adequate technical
15 expertise provided from all disciplines to the --
16 available to the planning author and that they prepare
17 prescriptions was evidence in our evidence.

18 Q. How does the establishment of a
19 planning team per se assist in the definition of
20 responsibilities and accountabilities?

21 A. Through the appointment of the
22 planning team, the terms of reference which outlines
23 the kind of information that those individuals are
24 expected to bring forward to the planning team is at
25 the very outset of that and having those individuals

1 follow through with that in the preparation of the
2 plan.

3 Q. I think we will leave Dean
4 Baskerville aside for a moment and perhaps, Mr.
5 Kennedy, I will continue with you. Once a timber
6 management plan has been completed and approved, the
7 plans are available for inspection at the district
8 office; is that correct?

9 A. Yes, it is.

10 Q. And, as well, a copy of the plan and
11 supporting documentation is sent to the EA Branch of
12 the Ministry of the Environment?

13 A. Yes, it is.

14 Q. Now, given that the proponent here is
15 the Ministry of Natural Resources, would it be
16 reasonable for the Board to require the Ministry of
17 Natural Resources to put all plans and supporting
18 documentation into a centralized registry system?

19 A. It would be something worth
20 considering, yes.

21 Q. Would it be also worth considering
22 whether or not it would be reasonable for the Board to
23 require the Ministry of Natural Resources to maintain a
24 centralized filing system that would record the
25 location of the areas covered by each plan, the

1 duration of the plan, any amendments to the plan, the
2 plan status and those kinds of details?

3 A. Could I just have a moment?

4 MRS. KOVEN: Excuse me. Mr. Lindgren,
5 what is the difference between a centralized registry
6 system and a centralized filing system?

7 MR. LINDGREN: Well, as I conceive it, a
8 centralized registry system would, in effect, have all
9 the plans in one place. The filing system would be --

10 MRS. KOVEN: Like a library?

11 MR. LINDGREN: Like a library, but a
12 filing system I think is an addendum to that and it's
13 an effort to keep these plans current and also readily
14 accessible to the public.

15 MR. FLEET: Mr. Lindgren, when I was in
16 main office we, in fact, did - and I hope still do -
17 have copies of every timber management plan with
18 supporting documentation and with some associated
19 files, although not all the files you would expect to
20 find at the district office, but we did indeed keep all
21 of that at our main office which, when I was there, was
22 in Toronto and, of course, which is now in Sault Ste.
23 Marie.

24 MR. LINDGREN: Q. But you don't know if
25 that is still the case?

1 MR. FLEET: A. I would say that that is
2 still the case.

3 Q. One further question. Are these
4 plans and these records kept in any systematic fashion
5 or are they kept in a manner that is readily accessible
6 and understandable to the public?

7 A. They were kept in alphabetical order
8 so that those who want ready access to a plan would be
9 able to refer to that plan by the name of the
10 management unit instead of having, for example, to know
11 which region and which district the plan is in; in
12 other words, as long as they knew the name of the
13 management unit, they did not have to have any further
14 administrative knowledge of MNR's geographic
15 organization.

16 Q. I think I have covered that one. Mr.
17 Fleet, in your evidence on September 21st you referred
18 to an example where an unresolved issue concerning
19 Caribou East -- the Caribou East Unit was resolved by
20 the regional review process and, in particular, the
21 example involved a park that had no management plan in
22 place and there were some eligible stands near the park
23 and the issue was whether or not these stands should be
24 taken.

25 And you indicated that in resolving this

1 matter there was a commitment to produce a park
2 management plan.

3 MR. FREIDIN: Wasn't it a situation about
4 whether a road should go near the boundary?

5 MR. FLEET: No, Mr. Freidin, I reviewed
6 the transcript on that particular issue and, in fact,
7 on that day I said eligible stands. That was part of
8 the issue.

9 And I hope I didn't mislead anybody, but
10 the real crux of the issue was, of course, to access
11 those eligible stands we also had to build a road, that
12 was the significant impact on the park and, in the
13 absence of the park management plan, nobody could
14 provide the planning team with guidance with respect
15 to: Did they want that road to go right to the
16 doorstep of the park to provide access to the park, or
17 did we want to keep that road as far from the park as
18 was possible or some intermediate measure.

19 MR. LINDGREN: Q. Well, perhaps can you
20 go one stage further and indicate whether or not a
21 reserve or buffer was established in terms of road or
22 eligible stands that were harvested?

23 MR. FLEET: A. No, absolutely no buffer
24 was established. What was determined was that we would
25 not move hastily in terms of building a road near that

1 park in the absence of our other planning document,
2 park management plan, which would assist us in
3 determining where the most suitable road location would
4 be.

5 Q. You have just indicated that one of
6 the problems was that the park did not have a park
7 management plan to indicate or to provide any guidance
8 in that matter.

9 Does the Ministry of Natural Resources
10 have any guidelines, policies, directives that speak to
11 the establishment of buffers around parks?

12 A. Not that I am aware of. A park
13 boundary is a park boundary is my understanding.

14 Q. And theoretically you could cut to
15 the very edge of that boundary?

16 A. Yes.

17 Q. I would like to refer you to Exhibit
18 879 -- I'm sorry, I didn't provide you with previous
19 notice of this. These were the interrogatories that
20 were filed by FFT some time ago and it's Interrogatory
21 No. 12. Again the exhibit number is 879.

22 MR. LINDGREN: It's 879, Mr. Freidin, and
23 it's Interrogatory Question 12.

24 MR. FREIDIN: Thank you.

25 MR. LINDGREN: Q. The statement that is

1 made in the evidence that prompted this question was to
2 the effect that parks themselves tend to contain buffer
3 zones within their boundaries, and the question from
4 FFT was:

5 "What provincial policy or document
6 exists to support the proposition that
7 parks are designed with buffer zones
8 within the boundaries?"

9 And the answer goes on to indicate:

10 "There is no written documentation that
11 supports this particular proposition."

12 MR. FREIDIN: "However..."

13 MR. LINDGREN: I will continue it:

14 "However, during the creation of
15 provincial park boundaries, the values
16 identified and contained within
17 the park generally have the immediate
18 area around them designated as parkland
19 to ensure that adequate protection of
20 these features and values."

21 Q. And presumably, Mr. Fleet, that is
22 why you said, in theory, cutting or road construction
23 could occur at the very boundary of the park?

24 MR. FLEET: A. Theoretically in the
25 absence of a formally prescribed buffer. I would like

1 to add to that, of course, that on most planning teams
2 there would be parks representations. I say most,
3 there may be plans where there are no parks in the
4 management unit, okay, and in that case it may not be
5 necessary to have parks representation.

6 But on most management planning teams
7 there would be parks representation and if there was a
8 feature that was determined needed some type of
9 protection from normal operations, in the boreal forest
10 that would be interpreted as clearcutting. Through the
11 planning team process or the identification of areas of
12 concern on a case-by-case, feature-by-feature basis a
13 feature would be afforded protection.

14 Q. Can I ask you who authored this
15 particular answer?

16 MR. MULTAMAKI: A. That would be myself.
17 In fact, what you are referring to is page 92 of the
18 statement of evidence and it's based on a statement
19 that was in the Red Lake Crown Management Unit Plan.

20 Q. Well perhaps, Mr. Multamaki, I will
21 just ask you one question of clarification. The second
22 question posed in this interrogatory is:

23 "On what evidence does the writer rely to
24 support this statement, other than for
25 a woodlands caribou park, for which he

1 contends the boundaries are offset by
2 several hundred metres?"

3 I don't see an answer to that particular
4 question. Perhaps you can provide one at this point,
5 or perhaps the answer is there and I am not seeing it.
6 Perhaps you can clarify this matter for me?

7 A. Are you referring to -- or I
8 understand you to mean you are referring to there is no
9 written documentation as -- or direction as to buffer
10 zones, or buffer areas in parks.

11 Q. No, I think that point is clear. I
12 am just wondering where is the answer to the second
13 question?

14 A. And I think the answer is contained,
15 in fact, in the answer given to this interrogatory in
16 that when you examine parks generally, parks encompass
17 or are created for a specific feature or value; i.e.,
18 recreational use, ANSIs and so on and, in fact the
19 immediate area around those features or values are
20 designated as parklands.

21 When a park is created it's my
22 understanding that it simply doesn't contain that
23 single feature, it contains a certain amount of
24 adjacent area and, in fact, to ensure that the
25 protection of that feature does take place or use of

1 that feature can take place.

2 Q. Okay. Thank you for clearing that up
3 for me.

4 Mr. Bisschop, if I could speak to you
5 briefly about bump-up. Now, in your evidence, Mr.
6 Bisschop, you have indicated that the current public
7 notices that are issued with respect to timber
8 management plans do not contain a reference to bump-up
9 because the timber management Class EA is not yet
10 approved. I believe that was the position you took
11 last week or the week before?

12 MR. BISSCHOP: A. That's correct.

13 Q. Isn't it true, Mr. Bisschop, that at
14 least for road planning on Crown management units the
15 public already has an opportunity to request bump-ups
16 under the access roads Class EA?

17 A. That's correct, and I should qualify
18 my first answer that in those instances there is a
19 requirement to reference bump-up in the public notices
20 that apply. And I think that is addressed - I can't
21 recall the exhibit number, but I believe it was filed
22 yesterday - on primary road planning for the Crown
23 management units where we spoke to public notice
24 requirements.

25 Q. I don't have that exhibit before me,

1 but the authority or reference I was going to refer you
2 to is page 5 of the MNR's field environmental planning
3 procedure and guidelines for MNR Class EA projects.

4 Can you confirm for me that that page
5 makes it mandatory for public notices to state that the
6 public has a right to request an individual EA?

7 A. Excuse me, could you refer me to the
8 page again?

9 Q. That was page 5.

10 MRS. KOVEN: Mr. Lindgren, what reference
11 is that, what document?

12 MR. LINDGREN: It's not an exhibit yet,
13 it's the document entitled: Field environmental
14 planning procedure and guidelines for MNR Class EA
15 projects. And I don't have a copy with me, I do have a
16 reference to it in some correspondence from the MNR.

17 MR. BISSCHOP: This is different than
18 the --

19 MR. LINDGREN: Q. It's not the access
20 roads Class EA.

21 MR. CASSIDY: Well, does the witness have
22 it?

23 MR. BISSCHOP: I am not sure what you are
24 referring to there.

25 MR. LINDGREN: Q. I have a letter which

1 I'm not intending to file, but I do have a letter from
2 the district manager of the Timmins/Gogama District
3 dated August 18th, 1986 and it was with respect to some
4 concerns about a public notice that made reference to
5 the opportunity for bump-up on access roads.

6 And I can just indicate that the first
7 paragraph of this letter reads as follows:

8 "In the field environmental procedure and
9 guidelines for MNR Class EA projects,
10 page 5 describes the contents of the
11 public notice. A section of this
12 requirement states that the notice must
13 state that the public has the right to
14 request an individual assessment."

15 Now, I don't have that particular
16 document and I don't have that particular page, so I
17 was asking you to confirm that, in fact, is what that
18 document provides.

19 MR. FREIDIN: The witness has already
20 indicated he is not familiar with the document. Can I
21 see the letter?

22 MR. LINDGREN: (handed)

23 MR. FREIDIN: Maybe one of the witnesses
24 might.

25 MR. BISSCHOP: Mr. Lindgren, I am trying

1 to find the equivalent actually in the Class EA for
2 access roads so that I could confirm that.

3 MR. CASSIDY: It might be helpful to show
4 the witness the document to compare it with the access
5 roads rather than spending time guessing.

6 MR. LINDGREN: Q. Mr. Kennedy, are you
7 aware of the document so entitled?

8 MR. KENNEDY: A. I believe I would be
9 speculating at this point.

10 Q. Is that a speculative yes or no?

11 MR. BISSCHOP: A. Mr. Lindgren, I must
12 confess, I find this direction from an MNR district to
13 a forest company that says the FEPP applies to their
14 planning of roads to be incorrect. As you know, the
15 FEPP, through the exemption order, applies only to the
16 planning of primary roads on Crown management units.

17 MR. KENNEDY: Excuse me, Mr. Bisschop,
18 could I have a look at that.

19 MR. BISSCHOP: (handed)

20 MR. KENNEDY: The reason I interrupted
21 Mr. Bisschop is that there is a possibility that the
22 road may be on a Crown unit and they would be subject
23 to the advice of the company as to the measures that
24 are to be undertaken or --

25 THE CHAIRMAN: Well, regardless of

1 whether it's contained in a directive or not, is it not
2 the case that with respect to approved Class EA
3 situations relative to roads that there is a
4 requirement for the public notice to contain reference
5 to a bump-up provision?

6 MR. BISSCHOP: Yes, Mr. Chairman, and I
7 think the easiest way to resolve this is if we could
8 have the exhibit number for the figure -- the bulletin
9 yesterday morning.

10 MR. FREIDIN: The May 3, 1988 bulletin
11 was marked yesterday. I don't believe...

12 MR. BISSCHOP: Exhibit -- I don't know
13 the number.

14 MR. FREIDIN: Page 2, paragraph 3 sub (b)
15 I think, Mr. Bisschop.

16 MR. BISSCHOP: Mr. Chairman, if you have
17 located that you will see the reference. As well it
18 would be addressed also in Section 4 sub (b) for the
19 second notice, the second notice requirement of the
20 FEPP that is.

21 And just to go back to the Class EA for
22 access roads to MNR facilities, it speaks to -- doesn't
23 use the word bump-up, but speaks to the opportunities
24 to request elevation of a project to an individual
25 environmental assessment status, but I don't believe it

1 specifically speaks to identifying that in the public
2 notice requirements. We have provided that direction
3 through this bulletin.

4 MR. LINDGREN: Q. Okay, thank you. I
5 just have one question. I wasn't intending to get into
6 it, but now that we are, perhaps I can offer by way of
7 explanation why I haven't been able to provide a copy
8 of the notice that is referred to in the letter I
9 believe Mr. Kennedy has.

10 I did contact the Timmins District a
11 couple of weeks ago to obtain a copy and they were
12 willing to provide it to me originally and then I was
13 phoned back and informed I would have to put my request
14 in writing and I would have to provide reasons to get a
15 copy of the public notice. Now, is that standard
16 procedure, Mr. Kennedy?

17 MR. FLEET: A. If you would, that is
18 standard procedure and my understanding of the
19 direction provided was that a very quick fax of your
20 specific request, so that you could be accommodated in
21 the fastest turnaround time possible would be suitable,
22 but in Timmins District that is standard procedure,
23 when we get requests of any kind generally. So that we
24 better understand exactly what it is that is being
25 requested, we get it in writing.

1 MR. KENNEDY: A. Mr. Lindgren, when
2 counsel involved with this particular Class EA hearing
3 are requesting information, we've instructed our field
4 staff to ensure that our offices are kept informed and
5 we have expected them to deal through our counsel to
6 obtain information from the field.

7 Q. Okay, thank you. But I was making
8 the request from Toronto. In any event, I don't want
9 to pursue the matter.

10 I think, Mr. Bisschop, that you have
11 agreed with me that at least with respect to roads on
12 Crown management units there should be a reference in
13 the public notice that an opportunity to bump-up the
14 matter to an individual EA should be included in the
15 notice?

16 MR. BISSCHOP: A. To bump up a primary
17 road proposal, yes.

18 MR. FREIDIN: By reason of the direction
19 contained in Exhibit 884 as a requirement.

20 MR. LINDGREN: Q. Is there any evidence
21 before this Board that public notices respecting
22 primary roads on Crown management units have included
23 this bump-up reference?

24 MR. BISSCHOP: A. I can't offhand
25 demonstrate through any example that that direction has

1 been provided or not, I am not familiar with that field
2 level of detail.

3 Q. For public notices that are issued
4 with respect to current timber management plans, why
5 hasn't the Ministry included a statement to the effect
6 that if there is approval for this timber management
7 Class EA there will be an opportunity to make a bump-up
8 request with respect to major amendments?

9 MR. FREIDIN: Sorry?

10 MR. BISSCHOP: Excuse me, you've got a
11 couple --

12 MR. FREIDIN: Would you repeat that?

13 MR. LINDGREN: Q. Okay. Let's break it
14 into some discreet components here. If a major
15 amendment is requested of a current timber management
16 plan, a plan that's in existence now, there is an
17 opportunity to request a bump-up or there will be if
18 this EA is approved.

19 MR. BISSCHOP: A. There will upon
20 approval of the Class EA; there currently is no
21 provision for that, no.

22 Q. So my question is: With respect to
23 the public notices that are issued in relation to
24 existing or imminent timber management plans, why is
25 there not a reference to the possibility of requesting

1 a bump-up for major amendments?

2 MR. FREIDIN: I'm sorry. The answer is
3 there is no --

4 MR. BISSCHOP: The provision doesn't
5 apply.

6 MR. FREIDIN: I'm sorry, go ahead.

7 MR. BISSCHOP: I think it's as simple as
8 the provisions do not currently apply.

9 MR. LINDGREN: Q. I think we are clear
10 on that, Mr. Bisschop. I am wondering why you can't
11 put a statement to the effect that when the provisions
12 do apply there will be an opportunity for bump-up?

13 THE CHAIRMAN: They may never apply.

14 MR. LINDGREN: Well, that is why I said
15 if.

16 MR. BISSCHOP: I think that that would be
17 a confusing matter to put into a public notice at this
18 time.

19 MR. FREIDIN: We are certainly not
20 suggesting that any bump-up provisions be retroactive
21 subject to, you know, assuming the Board gives
22 approval.

23 MR. LINDGREN: The concern is not the
24 retroactivity of a bump-up request.

25 MR. FREIDIN: Then what is the use of

1 putting something like that in a notice now. This
2 situation arises five years from now after the Board --

3 THE CHAIRMAN: Well surely, Mr. Lindgren,
4 if there was approval given to the Class EA and a major
5 amendment cropped up in the future, notices would have
6 to be given with respect to that major amendment.

7 If it were subsequent to approval,
8 presumably those notices would contain reference to a
9 bump-up provision, period.

10 MR. FREIDIN: That is exactly --

11 MR. LINDGREN: Okay.

12 MR. BISSCHOP: And, Mr. Chairman, just to
13 add, we have made that specific commitment through the
14 government review, a concern raised by the EA Branch
15 that every notice clearly indicate that that provision
16 will apply upon approval of the Class EA.

17 MR. LINDGREN: Q. As it currently stands
18 under the Environmental Assessment Act, Mr. Bisschop,
19 can you confirm for me that members of the public do
20 now have the opportunity to ask the Minister of the
21 Environment to designate certain private sector
22 undertakings?

23 THE CHAIRMAN: Well, that is just
24 relative to the Environmental Assessment Act, period;
25 isn't it?

1 MR. LINDGREN: That's right.

2 THE CHAIRMAN: Well, they have that
3 statutory right as anyone does.

4 MR. LINDGREN: That's correct.

5 MR. BISSCHOP: That's my understanding as
6 well.

7 MR. LINDGREN: Just one final question on
8 this matter, Mr. Chairman, to tie it up.

9 Q. Given that the MNR has been provided
10 specific direction to include a bump-up reference in
11 public notices that are issued under the auspices of
12 the FEPP --

13 MR. FREIDIN: The Ministry itself has
14 made that a requirement. They have not been directed
15 by anyone to do it.

16 MR. LINDGREN: I misspoke myself, the
17 Ministry itself has undertaken to provide that
18 reference.

19 Q. And given that members of the public
20 do enjoy this opportunity to make a designation
21 request, although that is imposed by the statute and
22 not by the MNR, I am wondering why public notices that
23 are issued now are silent about these existing and
24 future bump-up opportunities and designation
25 opportunities?

1 THE CHAIRMAN: Well, I don't think we
2 will go around this again, Mr. Lindgren. I think the
3 answers with regards to that have been given.

4 MR. LINDGREN: Okay.

5 THE CHAIRMAN: And with respect to any
6 suggestion that perhaps the public should be given
7 notice of what is contained in a statute, there are
8 statutes, you are probably aware, that specifically
9 require that; others don't. And it's a matter I think
10 that where the Legislature has seen fit to notify the
11 public in certain ways, they have stipulated within a
12 statute.

13 For instance, the Intervenor Funding Act,
14 as you are probably aware, requires reference to be
15 made in notices of hearing that people have that right
16 under the statute. They have the right anyways, but
17 the Legislature saw fit to ensure that people were
18 specifically notified of that right. They haven't done
19 so with respect to the Environmental Assessment Act and
20 any right to designate -- to apply to the Minister for
21 designation.

22 MR. LINDGREN: You are quite right, Mr.
23 Chairman. I am prepared to move on.

24 MR. KENNEDY: Mr. Lindgren, you had asked
25 Mr. Bisschop a question as to whether there was any

1 evidence before the Board about public notices
2 containing information about the individual treatment
3 and just to point to Exhibit 851, page 57, where such a
4 notice does exist.

5 MR. LINDGREN: Q. Could you repeat the
6 reference for me, Mr. Kennedy?

7 MR. KENNEDY: A. Exhibit 851.

8 Q. Mm-hmm.

9 A. Page 57.

10 Q. Can I take a look at that, because I
11 don't happen to have that with me.

12 A. Oh certainly. (handed)

13 Q. Mr. Kennedy, that is only the public
14 notice for the Red Lake Crown Management Unit; is that
15 correct?

16 A. Yes, and you would expect to see the
17 same treatment for individual Crown timber management
18 plans.

19 Q. You would expect to see it. Is there
20 any evidence of that?

21 A. We have not undertaken to provide any
22 complete record of all public notices given for all
23 plans produced to date including reference to all
24 plans, no.

25 Q. Fine.

1 MR. FREIDIN: There is no evidence that
2 it was not either.

3 MR. LINDGREN: Q. Now, Mr. Bisschop, in
4 your evidence at page -- and this is at page 23720 of
5 the transcript, you were describing bump-up and, in
6 particular, you described bump-up as a form of appeal
7 to the Minister of the Environment if there is a
8 significant concern or public controversy about a
9 particular activity. Do you recall that statement?

10 MR. BISSCHOP: A. Yes, I think I may
11 have added a couple of other points as well.

12 MR. FREIDIN: Could I have the reference
13 again to the transcript?

14 MR. LINDGREN: 23720, it's I think Volume
15 139.

16 Q. Would you agree with me, Mr.
17 Bisschop, that a bump-up request is not an appeal on
18 the merits of the timber management plan?

19 MR. BISSCHOP: A. Excuse me, would you
20 say that again?

21 Q. A bump-up request is not an appeal on
22 the merits of a timber management plan. It's not an
23 appeal, it's a request that a matter be scrutinized
24 under an individual environmental assessment, so it's
25 not an appeal?

1 A. Well, I think, if I recall the
2 wording you just read from the transcript, I used the
3 term 'a form of appeal'. So, yes, it's not an appeal
4 in the legalistic sense that you would commonly deal
5 with.

6 I used the term 'form of appeal' as in
7 the vein of the intervenor is not satisfied with his
8 dealings with MNR, he chooses to appeal to another
9 body, the Minister of the Environment, to have his
10 concerns addressed further.

11 MR. FREIDIN: That is exactly what the
12 witness said:

13 "Mr. Chairman, I am sure you are quite
14 familiar that the application of the
15 concept, if you will, of class
16 environmental assessments in Ontario has
17 always involved provision of a
18 bump-up mechanism in the class
19 environmental assessment which I would
20 consider to be, in effect, a form of
21 appeal to the Minister of the Environment
22 if there is a significant concern or
23 public controversy about an activity or
24 perceived significant adverse impacts."
25 So I don't know why we are playing word

1 games here when the witness was quite clearly
2 colloquializing, in effect, what bump-up was and it was
3 clear that is what he was doing.

4 MR. LINDGREN: With respect, Mr.
5 Chairman, this is not a word game because my next
6 question to Mr. Bisschop is:

7 Q. Given that bump-up is not an appeal
8 and given that there seemed to be no formal appeals to
9 the Minister of Natural Resources or the Minister of
10 the Environment or to Cabinet with respect to an
11 approved timber management plan, in your opinion, would
12 it be reasonable for the Board to require the Ministry
13 to build in an appeal mechanism?

14 MR. BISSCHOP: A. I am not sure that
15 bump-up isn't that. I would suggest that bump-up is,
16 in fact, that mechanism. I am not sure what the
17 difference is you are...

18 THE CHAIRMAN: We can leave this to
19 argument at the end, but would the Board have
20 jurisdiction to do that in any event?

21 MR. LINDGREN: That is a matter for
22 argument.

23 THE CHAIRMAN: Can we rewrite a statute?

24 MR. LINDGREN: No, I'm not sure I'm
25 asking to rewrite the statute, I'm wondering -- I'm

1 asking to add on to the review and approval process.

2 MR. FREIDIN: The Ministry believes that
3 the process as put forward is adequate in relation to
4 giving rights of the parties to have their concerns
5 dealt with at a level other than at the district level.

6 MR. LINDGREN: Q. Can I ask you to turn
7 to Section 25(c) of the draft terms and conditions
8 submitted by the MNR.

9 It's term and condition 25(c), Mr.
10 Chairman.

11 THE CHAIRMAN: Okay.

12 MR. LINDGREN: Q. And I don't intend to
13 read it, Mr. Bisschop, but, in essence, this section
14 provides that once a bump-up request is made to the
15 Ministry of the Environment, the Ministry of Natural
16 Resources shall be permitted an opportunity to make
17 submissions to the Minister of the Environment on the
18 matter.

19 MR. BISSCHOP: A. That's correct.

20 Q. Now, I take it from this provision
21 then that the Ministry of Natural Resources will be
22 presumably taking some sort of position as to whether
23 or not a particular bump-up request should or should
24 not be granted?

25 A. In the sense that we will provide a

1 complete explanation of everything that happened in
2 planning and the attempt to deal with the concern that
3 is raised by the requestor, this section of the
4 condition is intended to address that, that we would be
5 given the opportunity to provide to the Minister of the
6 Environment an explanation of everything that has gone
7 on to date and that that would be information he would
8 take into account in his decision-making.

9 Q. Beyond providing this background
10 information and an explanation, Mr. Bisschop, would the
11 Ministry also be making representations as to whether
12 or not a request should be granted?

13 A. I think yes.

14 Q. And if that is the case, can you
15 please advise the Board what criteria the MNR will use
16 to determine whether or not a bump-up request should be
17 granted?

18 A. I don't think we would speak
19 specifically to criteria, we would speak to: There is
20 an approved Class EA in place, perhaps issues that were
21 raised in the request we would argue have already been
22 dealt with by the EA Board at the hearing and,
23 therefore, that ought to be considered in terms of
24 granting the request and that in the handling of the
25 concern of the party that is requesting the bump-up, we

1 have made every effort through the requirements of the
2 planning process to address that concern.

3 We recognize that in that planning in
4 dealing with concerns of parties that there will be
5 people who are not satisfied with the outcome of that
6 decision-making and anyone who is dissatisfied has the
7 opportunity to pursue the bump-up route.

8 Q. Can you confirm for me that some
9 dissatisfied people, in fact, have already made bump-up
10 requests in relation to timber management plans?

11 A. Yes, I am aware of that.

12 Q. And are you also aware that the
13 Ministry of the Environment is currently treating these
14 as designation requests?

15 A. Yes, and some of them they have been
16 considering for quite some time.

17 MR. LINDGREN: Mr. Chairman, I would like
18 to file as the next exhibit a package of material
19 relating to a designation request made by the Marceau
20 Lake Cottagers Association dated March 21st, 1988 and
21 relating to the Timmins Timber Management Plan.

22 (handed)

23 THE CHAIRMAN: Exhibit 895.

24 MR. LINDGREN: (handed)

25 MR. BISSCHOP: Thanks.

1 MR. LINDGREN: The exhibit number was...?

2 THE CHAIRMAN: 895.

3 MR. LINDGREN: 89...?

4 THE CHAIRMAN: 5. Mr. Lindgren, just so
5 we can put these documents in context, is it my
6 understanding that these relate to a timber management
7 plan itself as opposed to a primary road under an
8 approved Class EA; in which case, if that is the case,
9 as I understand what has transpired to date, there is
10 no yet approved Class EA regarding timber management
11 plans and, therefore, there is nothing to bump-up from
12 a Class EA.

13 So that the Ministry is saying to the
14 applicants, in effect, regardless of what you call it,
15 we will treat this as a designation request for an
16 individual environmental assessment on this particular
17 plan or plans.

18 MR. LINDGREN: I think that is made clear
19 in the Minister's letter which is the last page of this
20 document.

21 THE CHAIRMAN: Is that roughly the
22 sequence; have I got it right?

23 MR. LINDGREN: That's my understanding of
24 the turn of events.

25 MR. FREIDIN: The documents are not in

1 chronological order in the exhibit.

2 MR. LINDGREN: No, I think they are now,
3 Mr. Freidin.

4 MR. FREIDIN: No, from March of '88 you
5 go to January of '89 and the last document is June of
6 '88. I would suggest --

7 MR. LINDGREN: I stand corrected.

8 MR. FREIDIN: I would suggest, Mr.
9 Chairman, that if we were to go through this, that we
10 put these things in chronological order.

11 MR. LINDGREN: I don't think that's
12 terribly necessary, Mr. Chairman. It's not my
13 intention to review the facts of this particular
14 request in any detail with Mr. Bisschop.

15 I can indicate I did provide this
16 documentation to him last week. I think the material
17 is self-explanatory. What I would like to do is
18 highlight a couple of matters and ask Mr. Bisschop for
19 his opinions on those items.

20 THE CHAIRMAN: Well, I just want to make
21 sure I have got the facts straight. Is what the Board
22 has stated essentially the facts?

23 MR. LINDGREN: That's my understanding of
24 the facts.

25 MR. BISSCHOP: Mr. Chairman, if I could

1 briefly be of assistance. In effect, what the
2 requestor is doing, in my view, is he's saying:
3 Exemption order MNR 11-9 ought not apply to that plan,
4 an individual assessment should be produced in the
5 sense of someone requesting a designation at this time.

6 THE CHAIRMAN: Right. So that there is
7 no approved Class EA, there is nothing to bump it up
8 to; in the sense that there is no bump-up provision in
9 a Class EA yet approved, therefore, this would be no
10 different than anybody applying to the Minister where
11 an exemption order is in effect to say: Remove the
12 exemption order from this and allow it to go to a
13 separate and individual EA; is that correct?

14 MR. BISSCHOP: Exactly.

15 MR. LINDGREN: Q. With respect, Mr.
16 Bisschop, I see no reference in the March 21st, '88
17 letter to MNR exemption order 11-9. In my view, the
18 subject matter of this letter is the Timmins Timber
19 Management Plan and on page 2 of this document there
20 are four items that the cottagers were concerned about
21 and would like to see implemented perhaps into the plan
22 and that could be done via the individual EA route.

23 THE CHAIRMAN: Well, just a moment. Is
24 the Timmins Plan subject to the exemption order?

25 MR. BISSCHOP: The exemption order

1 applies to the preparation of plans for all forest
2 management units in the province.

3 THE CHAIRMAN: Okay. And it is exemption
4 order No. 11-9 that gives the exempting, pending the
5 resolution of this Class EA; is that not correct?

6 MR. BISSCHOP: That's correct.

7 MR. LINDGREN: I was just merely picking
8 up on the point that Mr. Bisschop somehow implied that
9 that was the sum and substance of the original request.
10 That is I think how it is being treated by the MOE.

11 MR. FREIDIN: That's not what he said.
12 What he said was that, in effect, they are treated as
13 if they were requests for removal of the exemption in
14 relation to those parts of the plan. It's the only
15 legal method by which you can get an individual
16 environmental assessment.

17 THE CHAIRMAN: The reason I am trying to
18 clarify it, obviously the requestor won't know the
19 intricacies of exemption orders and numbers and what
20 bump-up means, et cetera, in the context of a not yet
21 approved Class EA.

22 So regardless of what the requestor asked
23 for, it has to be treated administratively, and I would
24 suggest legally, in a particular way and the Minister
25 has chosen to treat it as a request for a designation,

1 which is probably quite proper in the circumstances.

2 MR. LINDGREN: Mm-hmm.

3 Q. Now, Mr. Bisschop, if I can ask you
4 to turn to the MNR letter dated January 3rd, 1989 which
5 is the second document in this exhibit. This is letter
6 to Mr. Brian Ward the Director of the Environmental
7 Assessment Branch.

8 Now, the first paragraph of this letter
9 indicates that the company's annual work schedule
10 proposes harvesting of jack pine near Marceau Lake in
11 English Township. Now stopping right there.

12 Can you confirm for me that under Section
13 25 of the draft terms and conditions bump-up is only
14 applicable to a timber management plan or a part of a
15 plan but not to an annual work schedule; is that the
16 case?

17 MR. BISSCHOP: A. Yes, that's correct.

18 Q. Now, given that many operational
19 details like this are not really finalized or
20 determined until the annual work schedule stage, what
21 is the rationale for excluding an annual work schedule
22 from a bump-up opportunity?

23 A. The subject of where operations is
24 going to occur is decided in timber management
25 planning. As we have explained, the annual work

1 schedule then simply schedules one year's worth of the
2 five years out of the timber management plan.

3 The subject of how operations are going
4 to occur is something -- in terms of the selection of
5 the appropriate silvicultural ground rules is something
6 that, yes, does happen subsequent to the preparation of
7 the timber management plan. I think we have explained
8 that in detail, that silvicultural ground rules are
9 approved in the plan and the understanding is that
10 there is a decision made at some time in the future
11 about which operations are going to occur.

12 All of the where and how dimensions of
13 the plan are approved in the plan and we provide the
14 opportunity for bump-up at that stage. Since the plan
15 is approved, any operations, and in the case of
16 silvicultural ground rules, alternative possible
17 operations are considered to be approved and it's a
18 matter then of: Provided operations are carried out
19 under the terms of an annual work schedule within the
20 context of that approval, they simply proceed.

21 So there is not a requirement to have
22 bump-up provisions because the operations are
23 proceeding under an approved plan.

24 Q. Now, if the plan contains a
25 silvicultural prescription for a particular area such

1 as mechanical site prep or prescribed burning,
2 presumably those are two interchangeable options for
3 site prep?

4 A. And in the development of the
5 silvicultural ground rules those would be identified,
6 considered, publicly available for review during the
7 preparation of the plan and ultimately approved as
8 possible techniques with the understanding that a
9 decision would be made at some time in the future.

10 MR. KENNEDY: A. Excuse me, Mr.
11 Lindgren, those two methods may not be directly
12 interchangeable on any given site.

13 Q. Mm-hmm. Now, because these are set
14 out as options or alternatives in the timber management
15 plan, a bump-up request may be made by a person who is
16 dissatisfied with one of those two options.

17 Is it likely that the Ministry's position
18 will be: There should be no bump-up because we haven't
19 actually decided what we are going to do yet, that
20 decision will be made in the annual work schedule
21 stage, and once that decision has been made shouldn't
22 anybody dissatisfied with that particular selection be
23 allowed to request a bump-up?

24 In other words, I am saying is --

25 MR. BISSCHOP: A. In other words --

1 Q. Would it be premature for someone to
2 request a bump-up of a particular alternative in a
3 timber management plan without actually knowing that is
4 going to be implemented? Isn't that what the
5 Ministry's position would be?

6 A. That it's premature to provide that
7 opportunity at that time?

8 Q. No, we have in a timber management
9 plan two silvicultural alternatives.

10 A. Right.

11 Q. A member of the public is concerned
12 about a particular prescribed burn option and he might
13 make a bump-up request--

14 A. At the time of--

15 Q. --at the time of the preparation of
16 the plan.

17 A. --plan preparation, right.

18 Q. Isn't it likely that the Ministry's
19 position is that the bump-up provision cannot or the
20 bump-up should not be granted because no decision has
21 been made yet?

22 A. No, I don't think we would take that
23 position at all. If he had a concern that prescribed
24 burn ought not be a silvicultural treatment as
25 described under the silvicultural ground rules, that is

1 the appropriate time at which he should make that kind
2 of bump-up request and our view would be that's the
3 appropriate time at which that would be considered.

4 We would not say that that is an
5 inappropriate time and you should do that later because
6 we do not provide the bump-up opportunity at the annual
7 work schedule level.

8 Q. Thank you.

9 MR. FREIDIN: Mr. Chairman, we have been
10 around this before, this is the exact examination and
11 cross-examination that took place about this.

12 THE CHAIRMAN: Well, Mr. Freidin --

13 MR. FREIDIN: Well, Mr. Chairman --

14 THE CHAIRMAN: No, hold on, Mr. Freidin,
15 with respect. This is a slightly different question.
16 I think it's a fair question to put to the witnesses.
17 You have allowed a time for bump-up during the
18 preparation of the plan itself.

19 If there is more than one option and it's
20 not yet determined which of those options is going to
21 be implemented, is that the appropriate time to make
22 the bump-up request when there isn't a bump-up request
23 allowed at the time that the option is chosen; namely,
24 at the annual work schedule time.

25 And he's getting the Ministry's view as

1 to what position they would take on such a request and
2 Mr. Bisschop is indicating that they would not say that
3 the request is premature, they would supposedly deal
4 with it at that time.

5 MR. FREIDIN: All right, Mr. Chairman.
6 Maybe it wasn't necessary for me to rise. I was just
7 going to -- I thought it had been canvassed when you
8 had asked the question of the panel when we talked
9 about prescribed burns and herbicide applications
10 specifically: Is there some means by which you could
11 bring to the attention of the people who came in at the
12 five-year level whether that was their opportunity to
13 have a formal appeal. And so I thought we had covered
14 that, but...

15 THE CHAIRMAN: No, we are dealing with
16 the timing of that.

17 MR. FREIDIN: All right.

18 THE CHAIRMAN: And, you know, it is a
19 legitimate question I think to put forward, would the
20 Ministry say: Well, we aren't deciding whether there
21 will be a prescribed burn until the annual work
22 schedule and, therefore, now is not the time to request
23 a bump-up.

24 MR. FREIDIN: I understand.

25 THE CHAIRMAN: Alternatively, Mr.

1 Bisschop, you might take the position or might you take
2 the position that if a bump-up is requested with
3 respect to one of the alternative options,
4 silvicultural options, that in order to avoid an
5 individual assessment you might drop that option?

6 MR. BISSCHOP: That was the point I was
7 going to add, Mr. Chairman. First of all, we would --
8 if the person came to us during the preparation of the
9 plan with that concern the first thing we would try to
10 do is address that concern, we would not say: Pursue
11 bump-up immediately, we would try to address the
12 concern.

13 THE CHAIRMAN: Well, if you did take that
14 position you would be slowing down your options
15 slightly if you had to go through an individual EA to
16 have that option approved; is that not correct?

17 MR. BISSCHOP: That's correct. We would
18 attempt to address the concern and we would -- if
19 through the course of trying to address that person's
20 concern we saw that that person was not satisfied,
21 could not be satisfied, we would have through the
22 public notices and we would have through our
23 explanation to him advised him that in order to pursue
24 that concern further he would do it during the
25 preparation of the plan and that is the opportunity at

1 which he can deal with it, with the bump-up request.

2 We would not say to him: You can pursue
3 that later when we make the actual decision annually,
4 because we do not provide the bump-up provisions
5 annually.

6 THE CHAIRMAN: Okay. But isn't there a
7 bit of a -- sort of a procedural problem in that?
8 Supposing it goes on to the next stage which is bump-up
9 request to the Minister of the Environment, how does
10 the Minister of the Environment make that kind of
11 decision when he has no real expectation that you are
12 going to want to implement that option?

13 MR. BISSCHOP: He has no certainty that
14 that activity--

15 THE CHAIRMAN: That's right.

16 MR. BISSCHOP: --activity might in fact
17 occur.

18 THE CHAIRMAN: In fact, all of the
19 details surrounding that activity may not yet have been
20 decided upon since you are not going to decide some of
21 the details supposedly until the annual work schedule.

22 So how is the Minister of the Environment
23 supposed to make that kind of decision at that stage
24 when it isn't an implementable plan, if I can use that
25 terminology, at that stage? Might he not say --

1 MR. BISSCHOP: I think...

2 THE CHAIRMAN: --how can I make a
3 decision at this stage, come back to me when you are
4 set on implementing this option?

5 MR. BISSCHOP: I think - and I don't
6 suggest this is the total answer, Mr. Chairman - but I
7 think in part he will rely on the deliberations and
8 decisions of this Board concerning the subject of use
9 of prescribed burn as a silvicultural technique. For
10 example, perhaps the subject matter of the request may
11 be as simple as, I don't like prescribed burns.

12 THE CHAIRMAN: No, but that doesn't help
13 us much. Suppose we, after reviewing all the evidence,
14 come to a decision that in certain circumstances
15 prescribed burns are acceptable and, in fact, desirable
16 depending on the particular situation. We wouldn't
17 want to rule out prescribed burns in all cases I
18 wouldn't think.

19 MR. BISSCHOP: That's correct

20 THE CHAIRMAN: There would probably be a
21 decision that would be reached on a site-by-site basis
22 taking into account all the circumstances. It is put
23 forward as a recognized silvicultural practice and at
24 this point there is no evidence before us that
25 prescribed burns in all cases should be banned

1 outright.

2 MR. KENNEDY: Mr. Chairman, I think if we
3 were confronted with an individual request that did
4 concern a proposal for a prescribed burn or the
5 possibility of a prescribed burn, there was an
6 objection based on a value expressed by an individual,
7 we would endeavor to provide additional information
8 such as that that is outlined in our draft terms and
9 conditions 25(c) where we would be responding to the
10 Ministry of the Environment with additional
11 information.

12 I would expect at that time we would
13 conduct additional field studies to determine if it is
14 practical to conduct a prescribed burn in that area and
15 to make a better decision as to if it's reasonable to
16 continue leaving that option open and, in that way, be
17 better informed to advise the Minister as to the
18 conditions on the ground.

19 MR. FREIDIN: Mr. Chairman, if I might
20 just respond to what I think the concern is. We will
21 be -- the witnesses have indicated what would happen if
22 that request occurred or that problem arose at the
23 five-year level, but the Ministry will be asking this
24 Board to, in fact, have as part of the planning
25 process, which will become terms and conditions, a

1 provision that bump-up will only apply at the five-year
2 level for the reasons given.

3 You might very well hear submissions as
4 to why there maybe should be bump-up at the annual work
5 schedule level. And I can tell you now that the
6 submissions of the Ministry of Natural Resources will
7 be that this Board should indicate that they have heard
8 the submissions on that, that a concern arose in
9 relation to specifically prescribed burns and the
10 aerial application of herbicides, that you would review
11 the evidence that you hear about that.

12 And I will be saying at the end of the
13 piece, making a submission to you that that evidence
14 would support the Board, in fact, indicating that, for
15 practical reasons, bump-ups at the annual work schedule
16 level of activities approved in the plan are not
17 appropriate and you would, in your reasons for
18 decision - assuming that you accepted my submission -
19 would indicate why that was, in fact, a reasonable
20 thing to do.

21 So that we would start off with, when a
22 bump-up request went to the Minister of the Environment
23 after we get an approval and if the hypothetical
24 situation you have indicated would arise, I think what
25 Mr. Bisschop is saying, that issue would hopefully be

1 canvassed in this forum and there would be something by
2 way of guidance on that issue. Now --

3 THE CHAIRMAN: Well, I think there is
4 going to have to be some guidance on this particular
5 issue at some stage from the Ministry of the
6 Environment as to how they might treat a bump-up
7 request at that stage from a practical standpoint
8 without having all of the information in front of them
9 and whether or not the Ministry of the Environment will
10 consider such a request premature.

11 MR. FREIDIN: All right. And the
12 question was asked, I think it was posed: What would
13 the Ministry of Natural Resources say in a situation
14 like that?

15 So let's assume for the moment that there
16 is no limit on bump-up to the timber management plan at
17 the five-year level. I would assume that what the
18 Ministry of Natural Resources would say to the Minister
19 of the Environment, who said: I don't have all the
20 details here in front of me; would be to, in fact, have
21 to make submissions to the Minister of the Environment
22 to say: We understand you don't have all of those
23 particulars before you, Mr. Minister, you don't because
24 of all of these reasons, it is impractical because of
25 the PBs being part of a silvicultural package for us to

1 leave this to a later date, if you the Minister of the
2 Environment feel we should leave it to until the annual
3 work schedule level it will cause us all kinds of
4 difficulty for the reasons you have heard here.

5 And we would have to make to the Minister
6 of the Environment the same submissions about that that
7 we are doing here, and say: You have got to decide
8 this now on the information that you have got
9 supplemented, as Mr. Kennedy would say, by going out
10 and getting as much information and trying to be as
11 particular as possible.

12 So that is what would happen, and I don't
13 think the Ministry of Natural Resources would just walk
14 away from what it has indicated its position is here;
15 that is, that some of these activities are part of the
16 silvicultural package and that is why we don't have
17 bump-up at the annual work schedule.

18 Now, that still leaves open, Mr.
19 Chairman, to be quite candid, the question that you
20 asked some time ago on this panel and earlier as to
21 whether or not the fact that the only formal
22 opportunity for an appeal to the Minister or a bump-up
23 exists, particularly in relation to these two
24 activities, at the five-year level. That is something
25 which I think we've indicated that we would have to

1 direct our minds to, and we will, and hopefully --

2 THE CHAIRMAN: Well, I am sure other
3 parties will also direct their minds to that same
4 question.

5 MR. FREIDIN: Well, I don't know whether
6 I have been helpful or not, but...

7 THE CHAIRMAN: Okay. I think you can
8 understand the Board's concerns, you can understand the
9 difficulties it may pose for the Minister of the
10 Environment making a decision at that stage on
11 inadequate facts before him.

12 MR. FREIDIN: And I am sure Mr. Campbell
13 will be the first to indicate - and he's not here -
14 that the Minister of the Environment is always faced
15 with very difficult decisions.

16 THE CHAIRMAN: Well, we will try and
17 assist him in that situation, whereby he won't be
18 placed in a untenable position in terms of making a
19 decision on virtually no facts.

20 MR. LINDGREN: Mr. Chairman -- oh, sorry,
21 Mrs. Koven.

22 MRS. KOVEN: Yes. I had a follow-up
23 question to Mr. Bisschop about this topic. Does the
24 Ministry of Natural Resources perceive that the
25 granting of a bump-up by the Minister of the

1 Environment -- do you perceive that to be a failure of
2 the timber management planning process?

3 MR. BISSCHOP: Not a failure of the
4 process, a failure to be able to satisfy the
5 intervenor, yes, but I think that we accept that there
6 will be situations in which we will not satisfy. That
7 is part of the, as I am sure the Board is very well
8 aware, part of the business of environmental
9 assessment.

10 MRS. KOVEN: Mm-hmm.

11 MR. BISSCHOP: So I think we have
12 designed a process that we think can successfully be
13 applied. So I wouldn't want to say that we will accept
14 the fact that the process will have failed.

15 MRS. KOVEN: So, in fact, the bump-up
16 procedure can be seen as complementary to the timber
17 management planning process and not necessarily just a
18 catchall to difficult situations that can't be
19 resolved?

20 MR. BISSCHOP: I would suggest that it's
21 an important part of the process that offers some
22 additional rights and opportunities to participants in
23 the process, yes.

24 THE CHAIRMAN: Well, aren't we forgetting
25 what bump-up is normally -- the way it's normally

1 regarded I think in environmental assessment circles,
2 if I might put it that way; and, that is, it's to
3 address situations which don't necessarily always
4 follow the norm. It's not necessarily related to a
5 situation covered by the usual Class EA of recurrent
6 activities which have been sufficiently assessed
7 generically to be covered by a Class EA, and you are
8 dealing with specific site-specific situation on which
9 you want a more complete assessment.

10 MR. BISSCHOP: When you use the terms
11 'other than the norm', Mr. Chairman, do you mean that
12 you would have a project or activity that does not fit
13 the Class EA and, therefore --

14 THE CHAIRMAN: Well, no. What I am
15 saying is, notwithstanding you would utilize prescribed
16 burns elsewhere - and prescribed burns have been looked
17 at generically throughout the area of the undertaking
18 as part of the Class EA - there can be situations, if a
19 bump-up request were granted, where on a particular
20 site with particular circumstances the Minister of the
21 Environment feels that an individual assessment going
22 into more detail should, in fact, be required and, in
23 such a case, may grant a bump-up request.

24 MR. BISSCHOP: I think that is a way of
25 summing up. More information required to satisfy

1 oneself a decision is made.

2 THE CHAIRMAN: Than was put forward in
3 the normal Class EA assessment. Now, notwithstanding
4 the fact that this particular Class EA is going into
5 detail that I think is beyond the belief of many
6 parties in terms of being very - I won't say complete -
7 but there is a lot of detail going into the various
8 activities canvassed as part of the proponent's
9 undertaking. It's hard to believe in certain
10 circumstances how you could get more detail about
11 certain activities than you have before this Board.

12 MR. BISSCHOP: And I think that reflects
13 the uniqueness of this particular Class EA.

14 THE CHAIRMAN: But there may well be
15 other activities that have not been covered necessarily
16 in great detail that might yet be subject to bump-up if
17 there were requests for one as a result of the planning
18 process.

19 MR. BISSCHOP: I am not sure what you
20 mean by other planning activities.

21 THE CHAIRMAN: Well, what I mean is, is
22 that anyone would have the right on a plan after
23 approval to request a bump-up on any of the aspects,
24 whether or not that would be granted is up to the
25 Minister of the Environment.

1 MR. BISSCHOP: Yes.

2 THE CHAIRMAN: I don't know if I am
3 losing you on that last --

4 MR. FREIDIN: And just one comment. In
5 terms of detail, Mr. Chairman, there are two levels at
6 which someone would have to consider whether there is
7 more detail. On a request for bump-up it might very
8 well be and, as Mr. Bisschop has said, the process is
9 not failing but you may not have satisfied, someone may
10 ask for a bump-up.

11 It might very well be that the amount of
12 information which is provided to the Ministry of the
13 Environment by the Ministry of Natural Resources has
14 been adequate to respond to that request and to
15 basically indicate a bump-up request should not be
16 granted, it might be no more than what, in fact, is
17 documented in the plan.

18 And it might very well be that if the
19 Minister of the Environment requests or orders that
20 there be an individual EA - again, depending on what
21 exists within the timber management plan and
22 supplementary documentation - the amount of information
23 which is supplied for the benefit of the Minister and
24 perhaps a hearing Board on an individual EA, again, may
25 not be much more or any more than what is in the plan,

1 so...

2 THE CHAIRMAN: Well, that is true, but
3 you would like to hope that if an individual EA was
4 ordered and the request for a bump-up were successful
5 that the type of information to be put forward in that
6 individual EA would be of a more intensive nature than
7 what was already approved in the Class EA, otherwise it
8 would seem that the bump-up procedure would be a
9 duplication.

10 MR. FREIDIN: You would have to have
11 information which is site-specific and I think the way
12 to answer your question is that decision would have to
13 be made on a case-by-case basis.

14 THE CHAIRMAN: Okay, Mr. Lindgren, where
15 are we going from here?

16 MR. LINDGREN: I can indicate that I have
17 approximately 15 or 20 minutes worth of questions left.
18 I am not sure if you would like to take a break at this
19 time or push on.

20 THE CHAIRMAN: Well, why don't we finish
21 off with your examination if it's only going to take
22 around 15 minutes, and then we will break at that time.

23 MR. LINDGREN: Okay, thank you.

24 Q. Mr. Bisschop, returning to the
25 January 3rd, 1989 letter to Mr. Ward, in the second

1 paragraph it's indicated that the primary concern of
2 this particular matter focuses on the cottagers request
3 for a 500-metre buffer and the Ministry in turn has
4 prescribed a 120-metre reserve around the lake and a
5 60-metre reserve -- a road reserve. That is what is
6 indicated in paragraph 2; is it not?

7 MR. BISSCHOP: A. Yes, that is my
8 understanding as well.

9 Q. Then turning to Mr. Ward's reply
10 dated April 7th, 1989, the next document in the
11 package, the second paragraph indicates that the staff
12 of the Environmental Assessment Branch have reviewed
13 the designation request by the cottagers and feel that
14 the cottagers have some valid concerns.

15 And then in the next paragraph it's
16 indicated that there is a significant conflict, an
17 apparent conflict between the cottaging and timber
18 harvesting within the context of the District Land Use
19 Guidelines.

20 And then just one other comment that is
21 made on the second page of this document, second
22 paragraph:"

23 "The conflict between logging interests
24 and recreational land uses such as
25 cottaging and outpost camps is a serious

1 concern. The buffer area offered to the
2 cottagers by MNR appears to be standard
3 for these types of conflicts."

4 Now, stopping right there, is this in
5 fact the case; is there a standard buffer for these
6 kinds of matters?

7 MR. BISSCHOP: A. No, there is no
8 standard buffer. As we have indicated in the
9 explanation of the planning process, we deal with
10 situations like this on a case-by-case basis.

11 In terms of the specifics of this whole
12 subject matter, Mr. Lindgren, and Mr. Chairman, Mr.
13 Fleet is from Timmins District, knows very well of the
14 details of this and I think is much better able to
15 respond than I am.

16 MR. FREIDIN: And one matter, perhaps
17 before Mr. Fleet has an opportunity to do that. You
18 will notice in the very first letter which was referred
19 to by Mr. Lindgren, January 3rd, 1989 letter, there is
20 reference in the second paragraph in the fourth line to
21 an April the 11th, 1988 letter from Timmins District
22 sent to the Ministry of the Environment with a
23 background package.

24 Now, this documentation has been filed
25 and is a fairly complete record of what happened and

1 think because one of the matters of interest, I think
2 to some of the parties and the Board, is: How well
3 does the Ministry of Natural Resources respond to these
4 sorts of situations. I am showing you now the contents
5 of that April 11th letter and the enclosures and I
6 would ask that that be included as part of the exhibit
7 so that the record is complete.

8 MR. LINDGREN: I don't have any
9 difficulty with that proposal, Mr. Chairman, but I
10 would like to emphasize that my concern here is not so
11 much the factual basis of this request. I am trying to
12 draw out some of the matters and ask some broader
13 procedural questions.

14 If Mr. Freidin feels it's necessary to
15 file that as an addendum to this, he is certainly free
16 to do that, but I would also request that if he has
17 further comments to make about that documentation, he
18 can save it for his re-examination.

19 MR. FREIDIN: My concern is that the
20 questions about the process in a general way have been
21 introduced by reference to certain portions of these
22 letters leaving the impression -- I think in some cases
23 perhaps might lead the Board to the wrong impression,
24 and I would like the record to be complete.

25 THE CHAIRMAN: Okay. Why don't we admit

1 it.

2 MR. FREIDIN: I don't have copies now.

3 THE CHAIRMAN: Why don't we give it a
4 separate number, the one following. Exhibit 896.

5 MR. FREIDIN: Could we make it the same
6 number -- oh, all right. Or 895A.

7 MR. LINDGREN: And precisely what is this
8 document, Mr. Freidin?

9 MR. FREIDIN: It's the April 11th, 1988
10 letter from Timmins District to the Minister -- to Mr.
11 Ward which is referred to in the January 3rd, 1989
12 letter.

13 In fact, what it is it's the response to
14 the original request by the Marceau Lake Cottagers
15 Association, that initial request being dated March the
16 21st, 1988.

17 THE CHAIRMAN: Okay. To keep it
18 together, since you make reference to the January 3rd
19 letter, let's make the first Exhibit 895A and this
20 package will be Exhibit 895B.

21 MR. FREIDIN: Thank you, Mr. Chairman.

22 ---EXHIBIT NO. 895A: Document package submitted by
23 Forests for Tomorrow containing
24 assorted letters and memoranda
between Marceau Lake Cottagers
Association, MOE and MNR.

25 ---EXHIBIT NO. 895B: Supplementary document package

1 submitted by Ministry of Natural
2 Resources in relation to
Exhibit 895A.

3 MR. FLEET: Mr. Lindgren, if I could
4 respond to your question is that 120-metres a standard
5 type of buffer. For the District Land Use Guidelines
6 for the Timmins District for that particular lake a
7 120-metre buffer is prescribed and what was failed to
8 be mentioned in the letter from the Marceau Lake
9 Cottagers Association was that specifically within the
10 120-metre buffer on that particular cottaging lake, as
11 prescribed by the District Land Use Guidelines, there
12 are certain forestry activities permitted even within
13 the 120-metre buffer.

14 With respect to how the District Land Use
15 Guidelines have been dealt with with respect to this,
16 and with respect to the planning process in general,
17 they have provided, at the very least, minimum
18 direction in terms of what might be provided.

19 So, in other words, we have met the
20 120-metre requirement and, in fact, exceeded it because
21 of the permissible operations within the 120-metre
22 buffer around Marceau Lake include - and this is right
23 from the District Land Use Guidelines for Timmins:

24 "Regeneration activity will be
25 encouraged, forest harvesting is

1 anticipated in MacArthur and Bartlett
2 Townships..."

3 Which is where Marceau Lake is:

4 "...and Bartlett Townships, modified
5 forest management techniques may be
6 utilized within 120 metres of all
7 recognized canoe routes and cottaging
8 lakes."

9 So with respect to 120 metres being
10 standard, it's prescribed by the DLUG and, in fact,
11 with respect to the resolution of this issue in the
12 package that you handed out there is a letter dated
13 June the 16th to Brian Ward, Director of the
14 Environmental Assessment Branch, from John Kenrick the
15 acting regional director.

16 If I could just point out, first with
17 respect to that letter, one minor administrative flaw.
18 The covering page is dated June the 16th, the
19 subsequent pages are dated June the 7th. It is in fact
20 all a single letter, it's the marvels of word
21 processing I think that have got us here.

22 MR. CASSIDY: Which is the correct date?

23 MR. FLEET: June the 16th is the correct
24 date. On the third page, the top paragraph --

25 THE CHAIRMAN: Sorry, go ahead.

1 MR. FLEET: On the third page of that
2 letter -- memorandum to Brian Ward, the very top
3 paragraph addresses standard buffers and how they
4 indeed have been dealt with in this instance and
5 generally with respect to the timber management
6 planning process.

7 MR. LINDGREN: Q. Now, at the outset of
8 your answer, Mr. Fleet, did you indicate that 120
9 metres is somehow a minimum standard that was exceeded
10 in this case?

11 MR. FLEET: A. No, I am suggesting that
12 there is direction in the District Land Use Guidelines
13 indicating that for cottaging lakes in this particular
14 District Land Use zone, 120 metres would be provided
15 within which modified forestry activities could be
16 conducted.

17 And I would add to that that indeed in
18 this case the resolution of the issue proposed by the
19 Ministry of Natural Resources included a 120-metre
20 no-cut harvest reserve on the east side of the lake
21 where the 25 cottages are and on the west side of the
22 lake, which would be the side which is the view from
23 the cottages, there was a skyline reserve prescription
24 agreed to - perhaps not agreed to, the issue is
25 outstanding - there was a skyline prescription

1 prescribed as MNR's recommended solution to the issue.

2 We anticipate that that reserve will be
3 in excess of 200 metres and in our prescription we
4 suggested that the president or his designate of the
5 cottagers association be present to assist in the
6 marking out of that particular reserve so that there
7 could be some assurance to the cottagers association
8 that indeed their concerns were addressed.

9 We are trying to get away from the
10 doughnut concept and we felt it wasn't necessary to
11 have a 500-metre reserve to achieve the objectives and
12 satisfy the concerns of the cottagers.

13 In addition, we also prescribed a
14 60-metre reserve -- temporary reserve on the opposite
15 side of the road that the cottagers use to access their
16 cottages, it's approximately at the 120-metre mark.

17 We additionally prescribed a 60-metre
18 reserve along the logging road that would be retained
19 in place until the area behind it was harvested,
20 reforested and had reached a predetermined height, and
21 then we would take that reserve of 60 metres and they
22 would not have a view of a large clearcut.

23 Q. Okay. Thank you, Mr. Fleet. That
24 actually provides a good lead-in to my next question.

25 On the page 2 of Mr. Ward's letter he

1 asks the MNR to review the situation and advise him as
2 to whether or not the proposed buffer area around the
3 cottages warrants some modification based on the
4 cottagers' concerns, and then turning to the June 16th
5 letter to which you have just referred on page 4, the
6 acting regional director indicates that -- this is I
7 guess the second last sentence:

8 "We believe that the process we have
9 followed as outlined in the Timber
10 Management Planning Manual for Crown
11 Lands in Ontario and in the Class
12 Environmental Assessment for Timber
13 Management on Crown Lands in Ontario has
14 been followed and the process has worked
15 well. We believe our decision does not
16 warrant modification and, therefore, the
17 reserve will remain as prescribed in the
18 timber management plan pending your
19 Minister's decision on the designation
20 request."

21 And now you are just indicating that a
22 200-metre reserve has been proposed by the Ministry.

23 MR. FLEET: A. What the paragraph on
24 page 4 says is we believe our decision does not warrant
25 modification and, therefore, the reserve will remain as

1 prescribed.

2 The prescribed reserve is a skyline
3 reserve on the west side of the lake a 120-metre
4 give -- add two or three metres, because if it's going
5 to go right to the road then it's 123 metres on the
6 east side of the lake, and a 60-metre deferred reserve
7 on the opposite side of the road, the east side of the
8 road.

9 That is our prescription. That is what
10 would be indicated in the document that Mr. Freidin
11 just filed and that is what would be included in the
12 timber management plan and that is the prescription
13 which the cottagers have taken -- they do not -- they
14 have taken exception to that particular prescription.

15 Q. But I thought in your evidence you
16 just indicated that the Ministry was now looking at a
17 200-metre reserve?

18 A. On the top of page 3 with respect to
19 the standard buffers, that 120 metres is something
20 prescribed by the District Land Use Guidelines and in
21 that particular paragraph we go on to indicate that, in
22 this instance, we have prescribed a skyline reserve on
23 the lake which will greatly exceed the 120 metres
24 suggested in the Land Use Guidelines and, additionally,
25 we have provided for a reserve along the road in the

1 vicinity of the cottages. These additional reserves
2 are in response to the cottagers' concerns and go
3 beyond the district land use requirement in this area.

4 It is those additional reserve
5 prescriptions that the final paragraph on page 4 refers
6 to, in the sense that we have made a decision, and we
7 believe it to be our final decision unless the Ministry
8 of the Environment indicates that an individual EA
9 designation was appropriate.

10 Q. Okay. Mr. Bisschop, perhaps I could
11 turn to you for a broader question. Now, in
12 circumstances like this; that is, where the timber
13 management process under the class environmental
14 assessment has been followed, I take it that the
15 Ministry's position on this designation request or a
16 bump-up request or the process that has been followed
17 would be that the request should not be granted?

18 MR. BISSCHOP: A. Two matters. The
19 process has been followed and the prescription that has
20 been produced, in the Ministry's view, addresses the
21 cottagers concern.

22 Q. Can you advise me then under what
23 circumstances will the Ministry be prepared to support
24 a bump-up request? Because presumably the timber
25 management planning process will be followed in every

1 case, does it follow from that that the Ministry will
2 say every bump-up request should not be granted?

3 MR. FLEET: A. If I could...

4 MR. BISSCHOP: A. Generally our position
5 would have to be that we provide all of the information
6 necessary to the Minister of the Environment on what
7 has happened during the planning process and what has
8 been the prescription that the Ministry has produced to
9 address the concern.

10 And I think in general our argument would
11 be on the basis of our efforts and the resolution of
12 the concern, in our view, the bump-up request should
13 not be granted. I think that is only a reasonable
14 position that we can take.

15 THE CHAIRMAN: So, in effect, in almost
16 every case - there may be exceptions - you would be
17 recommending against bump-up on the basis that the
18 timber management planning process had been followed
19 and that the Ministry had acted reasonably in trying to
20 address all of the public's concerns?

21 MR. BISSCHOP: Yes. In essence, I am --

22 THE CHAIRMAN: Is that what you are
23 saying?

24 MR. BISSCHOP: Yes. And, in essence,
25 what I am saying is: Minister of the Environment, you

1 have the position of the requestor, you have our
2 position, they are fundamentally opposed. The
3 requestor obviously is asking for a granting of the
4 request, we are producing our information on why the
5 request should be denied.

6 MR. MARTEL: Basically a senior ministry
7 making a recommendation to a junior ministry. I don't
8 want to use that term too lightly with MOE people
9 around.

10 MR. FREIDIN: Which one is which, Mr.
11 Martel?

12 MR. MARTEL: I know which one is which,
13 or considered which.

14 MR. FREIDIN: We don't think like that.

15 MR. MARTEL: Well, maybe you don't, but I
16 have been around the pike a couple of times. What
17 chance is there of an acceptance of a bump-up then?

18 THE CHAIRMAN: Well --

19 MR. FREIDIN: Mr. Chairman, we rely on
20 the exercise by the Minister of the Environment of his
21 discretion and I don't think we can say anything more
22 than that.

23 MR. MARTEL: It's a real minister's
24 answer.

25 THE CHAIRMAN: Well, I don't think it's

1 for the Board to necessarily comment on whether or not
2 the discretion of one minister who has the jurisdiction
3 over another will be exercised in any particular way.
4 Certainly it his discretion and he is free to exercise
5 it anyway he chooses basically.

6 MR. LINDGREN: Q. Perhaps I can wind
7 this up and speed this up a little bit, Mr. Bisschop.
8 Can you confirm for me that the access roads Class EA
9 does contain bump-up criteria to help identify those
10 exceptional circumstances where an individual EA might
11 be necessary, and I believe that's at page 18 of the
12 access roads Class EA?

13 MR. BISSCHOP: A. Yes, it does contain
14 criteria, most of which fit the public controversy,
15 significant impact kind of descriptors that we attached
16 to the bump-up provisions in the timber Class EA.

17 Q. Where do we find that in term and
18 condition 25? As I read term and condition 25 there
19 are no criteria to help determine when an individual EA
20 might be necessary.

21 A. The specifics are not outlined in the
22 term and condition.

23 Q. Let me suggest two possible criteria
24 and I will ask you for your opinion on those, and these
25 are criteria that might help identify situations where

1 an individual EA might be appropriate. The first is
2 where there is significant public interest, and the
3 second is where there may be significant environmental
4 impacts.

5 Now, in your opinion, Mr. Bisschop,
6 should either or both of these criteria be set out in
7 term and condition 25, or is it the Ministry's position
8 that no criteria whatsoever should be set out in that
9 condition?

10 A. I believe those two criteria that you
11 mentioned are, in effect, duplicates of what we have
12 described in our evidence and in the Class EA itself,
13 on page 177 of the Class EA Document, we simply -- in
14 the creation of term and condition 25, we have not
15 provided that wording in the condition.

16 Q. Should that condition incorporate
17 that wording?

18 A. Perhaps it's the kind of wording that
19 should have and could be included in the preamble that
20 we have in the discussion that leads up to term and
21 condition 25 under the heading of bump-up.

22 MR. FREIDIN: I think we have dealt with
23 whether or not the Ministry of Natural Resources felt
24 that it was its job to tell the Minister of the
25 Environment on what he should base his discretion. I

1 think we indicated that we felt that that was a matter
2 that was --

3 THE CHAIRMAN: Well, without telling the
4 Minister of the Environment how that Minister should
5 base his discretion, surely we can deal with
6 circumstances in which the Ministry of Natural
7 Resources would support a request for bump-up, if any.

8 In other words, if these criteria
9 suggested by Mr. Lindgren were met, were present, are
10 those circumstances where MNR might support a request
11 for a bump-up?

12 MR. FREIDIN: Mr. Chairman, if I might, I
13 do not believe that it would be appropriate to indicate
14 when a proponent should support a request for an
15 individual environmental assessment.

16 These are criteria which are not
17 governing, it doesn't say that you must have an
18 individual EA in these cases, these are the sorts of
19 things that one would consider in making that
20 assessment.

21 Whether or not the situation in terms of
22 either a public controversy, or whether or not the
23 situation in terms of an alleged significant or unusual
24 environmental impact is something which was agreed to,
25 I mean, there could be a dispute on the facts as to

1 whether the situation in question fell within those
2 general sort of guidance.

3 And so I think it's a very dangerous
4 thing to do to try to outline when a proponent must
5 support a request because then, in effect, if you are
6 doing it, you are saying: There will always be
7 individual EAs in these cases. And I don't think that
8 is something that this Board should entertain and I
9 don't think it's something which the environmental
10 assessment process requires or which is advisable to
11 introduce at this time.

12 THE CHAIRMAN: Well, surely though there
13 could be circumstances in which the Ministry itself
14 feels -- the Ministry of Natural Resources feels that
15 because of the particular probable environmental impact
16 there should perhaps be an individual assessment.

17 MR. BISSCHOP: Mr. Chairman, if I could
18 add. I see a huge difference between setting out
19 circumstances in which we would support a request
20 versus a decision providing direction that would
21 indicate our position to the Minister of the
22 Environment on when we would support granting that
23 request.

24 And I think we've said on paper here and
25 it's common to many Class EAs that we can support that

1 a request ought to be -- the opportunity for request
2 ought to be available when there is significant public
3 controversy and significant impacts, and we support the
4 right of someone to make a request in those situations.

5 Now, whether we then --

6 THE CHAIRMAN: Would there be
7 circumstances where the Ministry itself would ask for
8 an individual environmental assessment?

9 MR. BISSCHOP: No, we have not provided
10 that in the bump-up.

11 THE CHAIRMAN: No. But, I am saying -- I
12 realize that, but would there be situations that you
13 could envisage where --

14 MR. FREIDIN: The Red Squirrel Road was
15 an example of that, Mr. Chairman, where the Ministry
16 did just that.

17 THE CHAIRMAN: I'm sorry?

18 MR. FREIDIN: The Red Squirrel Road is an
19 example. I mean, it wasn't in the context of a Class
20 EA, but it was a situation where the Ministry of
21 Natural Resources did that.

22 MR. BISSCHOP: But, Mr. Chairman, in
23 terms of this Class EA and timber management planning
24 we are saying no; we are saying the Class EA applies,
25 we are not ourselves indicating situations in which we

1 would say an individual EA is appropriate.

2 THE CHAIRMAN: Okay. So what you are
3 saying - I just want to get this straight - what you
4 are saying is that under the activities that might be
5 approved pursuant to this Class EA, you cannot envisage
6 circumstances whereby MNR might say that because of a
7 particular environmental impact in a particular
8 situation you would want to see an individual EA; is
9 that what you are saying?

10 MR. BISSCHOP: Exactly. You are correct.

11 THE CHAIRMAN: If the activities covered
12 by this Class EA are present, it doesn't matter whether
13 or not a particular impact in a particular situation is
14 so severe that it may warrant an individual EA, the
15 Ministry would not be requesting it, it would have to
16 be left to somebody else. Is that what you are saying?

17 MR. BISSCHOP: That's correct.

18 THE CHAIRMAN: Is that the position of
19 the Ministry?

20 MR. BISSCHOP: Our view is the process
21 covers those situations.

22 MR. LINDGREN: Okay. This is taking a
23 little bit longer than I anticipated, Mr. Chairman. I
24 do have two final bump-up questions for Mr. Bisschop.

25 Q. The first is whether or not a

1 contingency plan is subject to the bump-up provision,
2 and if not, why not?

3 MR. BISSCHOP: A. Contingency plan is
4 not subject --

5 THE CHAIRMAN: You mean a contingency
6 plan with respect to allocated harvest areas? What do
7 you mean by contingency plan?

8 MR. LINDGREN: Well, I am thinking of
9 circumstances where, for one reason or another, if the
10 preparation and approval of the timber management plan
11 is not completed by April 1st a contingency plan is
12 then prepared to allow operations to continue, is that
13 plan itself subject to bump-up, and I think Mr.
14 Bisschop's answer was no.

15 Q. And the second part of my question
16 is, why not?

17 MR. BISSCHOP: A. In our provisions for
18 a contingency plan which are outlined on pages 181 to
19 183 of the Class EA Document -- again, these are
20 provisions that are meant to deal obviously with
21 hopefully exceptional circumstances where a plan can't
22 be produced and approved on time.

23 There are specific provisions for
24 contingency plans where we would have to make a
25 proposal to the Minister of the Environment about how

1 we are going to handle that problem including -- the
2 proposal would include what the contingency plan will
3 contain, what term it will apply for, for example two
4 to three months, schedule for the preparation and
5 approval of that plan, and provisions for public
6 consultation.

7 In that proposal we would be advancing
8 the way in which we want to deal with that problem to
9 the Minister of the Environment and we would proceed
10 with the production of a plan that would cover that
11 interim period before a plan was produced and, through
12 the provisions for public consultation, address any
13 public concerns that there might be about operations
14 that would be contained in the contingency plan.

15 We have not provided the opportunity for
16 bump-up because we are dealing with, in effect, an
17 emergency situation in which we need some approval to
18 allow operations to proceed.

19 Q. If I can ask you to turn finally to
20 term and condition 25(f), and basically that section
21 provides that if the bump-up request is successful the
22 MNR will prepare an individual environmental assessment
23 in accordance with this provision.

24 Can you advise me, Mr. Bisschop, why this
25 condition makes no reference to any time commitments or

1 time limits? How is the public assured that this
2 process is not going to take six months or six years
3 down the road? Would it be reason for the Board to
4 require the MNR to submit an environmental assessment
5 as soon as possible, as soon as practical, or no later
6 than "x" amount of months after the designation or
7 bump-up request?

8 THE CHAIRMAN: But they can't proceed
9 with any of the activity without the approval; can
10 they?

11 MR. LINDGREN: No, I am talking about the
12 environmental assessment -- the preparation of the
13 Environmental Assessment Document itself and --

14 THE CHAIRMAN: So what? So suppose they
15 can do it in ten years.

16 MR. LINDGREN: Well, I mean, I could see
17 that that particular issue could be held in abeyance
18 through a long time.

19 THE CHAIRMAN: There isn't any activity
20 for which supposedly somebody has requested a bump-up
21 in the first place taking place for that same period of
22 time either.

23 MR. LINDGREN: That's correct, but I am
24 sure that a person who has made the bump-up request
25 would like to see this be resolved as expeditiously as

1 possible, and I am wondering why --

2 MR. BISSCHOP: I would simply argue that
3 the Ministry of Natural Resources would as well. I
4 don't think there has ever been any instance in the
5 province where -- for an individual EA, there has been
6 any decree for a proponent to produce that individual
7 EA in a specified period of time.

8 THE CHAIRMAN: You might well take the
9 position, Mr. Bisschop; may you not, that you will just
10 abandon the request for approval of those activities if
11 you feel that it doesn't fit in with your time frame or
12 with other activities you are carrying on, et cetera?

13 MR. BISSCHOP: Theoretically, yes, it's
14 possible you would simply abandon the project in
15 dispute.

16 THE CHAIRMAN: Well, if you abandon it,
17 surely it doesn't prevent a reapplication at a later
18 time; does it?

19 MR. LINDGREN: That's correct, but I
20 think what we are speaking about here is a particular
21 part or an activity under the timber management plan.

22 Q. What if the plan itself is subject to
23 a bump-up request, surely there should be some sort of
24 direction given in terms of when an individual EA of
25 that plan should be produced?

1 MR. BISSCHOP: A. I simply submit that
2 it's impossible in advance to decree that an individual
3 EA should be completed in a particular period of time.

4 THE CHAIRMAN: We would like to decree
5 that this hearing will end at a particular time, but we
6 are having as much trouble.

7 MR. LINDGREN: Okay. I do have one final
8 question and then that will conclude my questioning.
9 again it's to Mr. Bisschop, it's not on the bump-up,
10 it's on the amendment process.

11 I am looking at Exhibit 854 page D which
12 is the overhead of the decision-making process for the
13 amendment. I am advised that it's also reproduced at
14 page 472 of the witness statement, if people don't have
15 that exhibit.

16 Q. Now, Mr. Bisschop, I have reviewed
17 the various examples of amendments that your panel has
18 provided to the Board and my sense of this document is
19 that the predominant factor in the determination of
20 what category an amendment will fall into is whether or
21 not public consultation will be required. Is that the
22 sum and substance of this particular exhibit?

23 MR. BISSCHOP: A. I wouldn't say it's
24 the predominant factor.

25 Q. Well, it seems to be the threshold

1 question.

2 A. Yes, in the sense that the district
3 manager is faced with the problem of making a
4 responsible decision, and I think in terms of making
5 that decision he wants to ensure himself that he is not
6 going to face public criticism of the decision he
7 makes, so he very much asks himself the question:
8 Before I finalize my decision, ought I seek some public
9 reaction. And that would influence the decision on
10 going administrative, minor or major.

11 Q. Well, Mr. Bisschop, isn't this
12 classification scheme focused on the wrong thing;
13 shouldn't the classification criteria focus on the
14 nature and extent of the environmental impacts that
15 might result from the amendment as opposed to this
16 perceived need for some degree of public consultation?

17 A. There is no question that any
18 proposal of an amendment ought to deal with that. We
19 have indicated that no matter which category of
20 amendment you would pursue, you would complete all of
21 the -- what we refer to as the full timber management
22 planning requirements.

23 So the subject of impacts of any proposed
24 activity addressed by amendment would be addressed in
25 exactly the same manner as it would be addressed in a

1 timber management plan, and whether the activity is put
2 forward through an administrative or a major amendment,
3 you would still do the necessary planning of those
4 activities in order to grant their approval.

5 So, in that way, I would simply say that
6 the subject of impacts is addressed regardless of the
7 category.

8 Q. Shouldn't the subject of impacts be
9 the threshold question and then the level of public
10 consultation would flow from that; i.e., if it's a
11 significant impact, then obviously some larger public
12 consultation should be required?

13 A. I think --

14 THE CHAIRMAN: But can't you get into the
15 situation, Mr. Lindgren, where the Ministry decides
16 that there is no environmental impact, or very minimal
17 environmental impact but that position is not
18 necessarily agreed upon by the public, and that the
19 public itself may want to bring in a contrary view?

20 MR. LINDGREN: That's correct, and we
21 certainly support any and all forms of public
22 consultation in arriving at that determination.

23 MR. BISSCHOP: I would simply respond
24 that the two go hand-in-hand, and to address the
25 Chairman's point, for example, that is why we -- in the

1 provisions for minor amendment, we do have a situation
2 which could arise whereby concerns are raised on that
3 minor amendment that would cause a decision to elevate
4 the amendment to major or perhaps withdraw the
5 amendment entirely.

6 So I think it is sort of, in effect, a
7 sequential buildup that allows the impacts and the
8 public concerns about an amendment proposal to be
9 addressed.

10 MR. LINDGREN: Thank you, Mr. Bisschop.

11 Mr. Chairman, subject to the further
12 questions on the outstanding undertaking with respect
13 to Temagami, those are our questions.

14 THE CHAIRMAN: Thank you.

15 MR. COSMAN: Mr. Chairman, perhaps if
16 counsel and the Board would bring Exhibit 490 back with
17 them after the break, I would appreciate it.

18 THE CHAIRMAN: Okay. In view of the
19 lengthy session this morning, the Board is going to
20 take a half hour at this time.

21 Thank you.

22 --Recess taken at 10:05 a.m.

23 ---On resuming at 11:30 a.m.

24 THE CHAIRMAN: Thank you. Be seated,
25 please.

1 Ms. Blastorah, it's nice to see your
2 smiling face for a change.

3 MS. BLASTORAH: A change is always good,
4 I guess. I will only occupy the Board for a minute I
5 think, if I may.

6 I just wanted to advise the Board that we
7 have made two sets of the maps which resulted from the
8 clearcut exercise available in the Board's reading room
9 down the hall. The reason for that is the maps are
10 very expensive to reproduce and, consequently, we
11 thought that would be the best way to deal with it. So
12 I just wanted to let the Board know that --

13 THE CHAIRMAN: Have we given them an
14 exhibit number?

15 MS. BLASTORAH: No. I think the
16 intention was not to mark them at this time, just to
17 make them available.

18 THE CHAIRMAN: Oh, all right.

19 MS. BLASTORAH: And I just wanted
20 everyone to know that and I thought the simplest way to
21 do that would be to put it on the record.

22 THE CHAIRMAN: Thank you.

23 MS. BLASTORAH: Thank you.

24 MR. KENNEDY: Mr. Chairman, we were
25 wondering if Panel 15 could wish Ms. Blastorah a happy

1 birthday.

2 THE CHAIRMAN: The Board will join in.

3 Thank you.

4 MR. FREIDIN: And I will not sing.

5 MS. BLASTORAH: Thank you.

6 THE CHAIRMAN: The Board will thank you
7 for that, Mr. Freidin.

8 THE CHAIRMAN: Mr. Cosman?

9 MR. CHURCHER: I also understand it was
10 one of the court reporters' birthdays earlier this
11 week, and Bev should not go unnoticed.

12 MR. COSMAN: Mr. Chairman, in the spirit
13 of your recent directives/edicts I will be brief, I
14 hope in the same spirit that we have been brief in our
15 cross-examinations in the past.

16 I have a number of questions, Mr. Cassidy
17 has several in a discreet area with respect to matters
18 that came up in my absence. I can assure you that we
19 will be finished before lunch.

20 THE CHAIRMAN: Oh, terrific. We shall
21 listen attentatively, lunch is at twelve o'clock.

22 MR. COSMAN: I will do my best. Mr.
23 Chairman, there is a saying in this part of the north
24 that if there is a dispute between man and the moose
25 you should bet on the moose because the moose is likely

1 to win. With wildlife biologists like Mr. McNicol,
2 it's easy to understand why that is the case.

3 As you know, the thrust of our case will
4 be to try to offset that balance and give man at least
5 equal rights with the moose in this whole process.

6 I want to start in that vein with the
7 values map which has been the subject of some evidence
8 to date, and perhaps I could address a few questions to
9 Mr. Kennedy with respect to the values map.

10 CROSS-EXAMINATION BY MR. COSMAN:

11 Q. As we know, Mr. Kennedy, areas of
12 concern are identified on the values map.

13 THE CHAIRMAN: Could we just have the
14 exhibit number for that? Does anyone remember?

15 MR. CASSIDY: I believe it's 311.

16 MR. COSMAN: And I am really going to
17 deal with it in a conceptual way, Mr. Chairman.

18 THE CHAIRMAN: Okay.

19 MR. KENNEDY: 301.

20 THE CHAIRMAN: 301.

21 MR. CASSIDY: I stand corrected.

22 MR. COSMAN: Q. In addition to areas of
23 concern, I think it arose out of a question in fact
24 from the panel to a previous panel, it's clear that the
25 values map includes land use features not merely areas

1 of concern. I think that was your question, sir.

2 One important land use in the area of the
3 undertaking is that of mills that provide jobs to
4 people and I don't want to -- I am not suggesting this
5 as a criticism, but on the values map are mills
6 identified, Mr. Kennedy?

7 MR. KENNEDY: A. I don't believe we
8 specifically indicated that mills should be identified.
9 We have made reference to other infrastructure items
10 but not mills.

11 Q. Right.

12 A. Let me just clarify one point. You
13 mentioned that areas of concern are shown on the values
14 map, that is not really the case. What is shown though
15 is the values--

16 Q. Features.

17 A. --features and land uses..

18 Q. Yes, and values, right. Thank you.
19 With respect to -- mills aren't shown on the map, but
20 with respect to spawning areas for fish or fish
21 communities or communities of caribou, we know that
22 those are identified but are communities of people who
23 depend on the forests for a living identified on the
24 values map?

25 A. If you could just make one reference,

1 please.

2 Q. I don't believe they are as a rule;
3 am I not right?

4 A. As a rule, depending on the map which
5 is used as a base to start with, some communities would
6 be shown but, as a rule, they would not be shown as
7 a -- in total.

8 Q. And, in fact, a values map is really
9 more properly described as an other values map; other
10 than a values map because it covers -- its main purpose
11 is to identify values other than timber values in a
12 particular area; is that correct?

13 A. That would be a fair
14 characterization. Also we have indicated that it is a
15 summary of information that is contained within the
16 district of all such --

17 Q. Yes, relating to other values?

18 A. Yes and, as such, is not a total
19 coverage of all values that exist.

20 Q. Now, Mr. Multamaki described various
21 areas of concern that were identified with respect to
22 the Red Lake Crown Unit and I believe it was 39; am I
23 right, 29?

24 A. 29 I believe.

25 Q. Now, Mr. Multamaki, is it fair to say

1 that this number is really not typical and, in fact,
2 the numbers of areas of concern are, for most units, a
3 lot higher than that?

4 MR. MULTAMAKI: A. I obviously can't
5 comment on all units or even most of the units, but
6 it's my understanding that 29 is a relatively low
7 number.

8 Q. And, in fact, there are units in
9 which there are more than 500, some of which -- some
10 units have more than 900, and I am even advised that
11 there are units with 1200 areas of concern. Is that
12 information that you are aware of, or does anybody
13 dispute that information on the panel?

14 MR. KENNEDY: A. I would not dispute it.

15 Q. There is really no limit; is there,
16 on the number of areas of concern that may be
17 identified in a management unit?

18 A. You are correct.

19 Q. So that if someone discovers a new
20 bird's nest, the situation of that nest may become a
21 feature on a values map and become the subject of an
22 area of concern delineation?

23 A. Yes, that is possible.

24 Q. Or when a new tourist cabin is built,
25 the same thing can happen?

1 A. Yes.

2 Q. So new areas of concern may be
3 identified and features are afforded protection as
4 people come forward?

5 A. That's correct.

6 Q. And that is an increasing process as
7 with the public awareness of, among other things, this
8 hearing?

9 A. Yes. We have characterized it as an
10 ongoing addition to our information list.

11 Q. Now, as a corollary of this, as new
12 areas of concern are created, another area of the
13 productive forest from a timbe management perspective
14 may be put into a reserve; is that not right?

15 A. Yes, that's true.

16 Q. So there is with the increasing
17 numbers of areas of concern - and this isn't a
18 criticism of the process from your perspective - but
19 the natural conclusion of that is that more and more
20 areas of the productive forest are being -- the
21 features of interest to many people are being
22 identified and they are being taken out of the
23 productive forest from the point of view of timber
24 management?

25 A. When I agreed with you I was

1 indicating that that is a possibility that could result
2 from the development of prescriptions in areas of
3 concern, yes.

4 Q. Okay. And you do agree that over and
5 above parkland, that the numbers of areas of concern
6 have been increasing in the north in the area of the
7 undertaking?

8 A. I think I would agree with that, yes.

9 Q. Now, I want to take you to -- just to
10 get a broad sense of the parameter of this, and I want
11 to go to Exhibit 490, if I may.

12 MR. COSMAN: And I won't go into this in
13 detail because I am reminded that it was the subject of
14 cross-examination, Mr. Chairman, in Panel 6 -- or Panel
15 10 rather.

16 Q. But just if you would turn to the
17 last page of Exhibit 490 which is a chart that was
18 prepared, can you identify what this chart represents,
19 first of all?

20 MR. COSMAN: It's the very last page, Mr.
21 Chairman.

22 MR. MARTEL: I've got everything but the
23 chart.

24 THE CHAIRMAN: I think Mr. Martel's is
25 missing the chart. I've got a copy.

1 MR. CASSIDY: I have got an extra one.

2 MR. COSMAN: (handed)

3 MR. MARTEL: Thank you.

4 MR. COSMAN: Q. Now, Mr. Kennedy, just
5 for general purposes could you describe what this chart
6 is and how it came to be produced?

7 MR. KENNEDY: A. Yes. This chart was
8 produced by Ministry of Natural Resources staff in an
9 attempt to answer interrogatories posed by Forests for
10 Tomorrow in relation to Panel 10, and the chart format
11 has been used to provide a response to questions No.
12 27(c), 28, 30(a), 31, 32 and 33 as is outlined on the
13 notes to the attached -- sorry, on the second last page
14 of that exhibit on the notes to the table and
15 represents information that was gathered for forest
16 management units which have undergone timber management
17 planning in the fiscal years 1986-87 through 1988-89.

18 Q. So it's fairly recent information?

19 A. Yes, it is.

20 Q. And having regard to the chart and,
21 in particular, total (b) at the bottom of the chart,
22 what does that line -- what does that total indicate;
23 what does it signify?

24 A. That row is labeled total hectares in
25 reserves for all purposes.

1 Q. All right. And that would be the
2 total hectares in reserves for these various districts.

3 A. Yes, it would be total hectares in
4 reserves for plans that were prepared during that
5 period within each one of those districts.

6 Q. All right. And the next column (c)
7 going right across; what is that?

8 A. (c) is titled: Total Hectares
9 Planned for Harvest.

10 Q. Okay. And item (c) --

11 THE CHAIRMAN: Excuse me a moment.

12 Mr. Cosman, could I beg your indulgence
13 for a moment.

14 MR. COSMAN: Certainly.

15 ---Discussion off the record

16 THE CHAIRMAN: I beg your pardon.

17 MR. COSMAN: All right.

18 Q. Just going back to the table then,
19 sir, I just had asked you what item (c) was at the
20 bottom of the table.

21 MR. KENNEDY: A. Yes. I was indicating
22 that item (c) -- row (c) is total hectares planned for
23 harvest and would represent the amount of area in each
24 one of the plans prepared during that period in each
25 district.

1 Q. And underneath that there is a
2 percentage called for. What does that percentage
3 represent?

4 A. That percentage represents the amount
5 of area in (b) which is reserves expressed as a
6 percentage of the amount of area in (c), that which is
7 planned for harvest.

8 Q. And so just to -- and, once again,
9 just to get a range, if you go across the various
10 districts you have 5, 8, 19, 7, 12, 2, 5, 10, 14, 9,
11 right through to the end?

12 A. Yes.

13 Q. And those are the percentages as you
14 have described them. And are these percentages that
15 are over and above the area of land in parkland?

16 A. Yes, they would be.

17 Q. Are you familiar with, say, the
18 Brundtland Commission and the generally accepted
19 percentage that is suggested that ought to be put into
20 park as being between 5 and 10 per cent? Are you aware
21 of that yourself?

22 A. Yes, I am aware of that figure.

23 Q. And so you have --

24 MR. COSMAN: Those kinds of percentages,
25 separate and apart from the parkland that is already

1 identified and I won't take you through it, Mr.
2 Chairman, but it's identified in Panel 6 and page 96,
3 Figure 25 sets that out.

4 Q. Now, the focus of the evidence to
5 date has been to modify timber management to
6 accommodate other values. Do you agree that there
7 should be built in to the planning process a point
8 where you modify other forest values to accommodate
9 timber management; that is, the timber management
10 activities of harvest and renewal?

11 MR. KENNEDY: A. I think we have
12 provided such a forum through the area of concern
13 planning process where we are assessing all values and
14 landscape and the relative best prescription to deal
15 with those values relative to timber management.

16 Q. But, as I understand the process,
17 someone comes forward and says: We need some more land
18 for moose or there is a bird nest has been identified,
19 therefore, we have to protect it, or a tourist cabin
20 wants to be established and, therefore, we have got to
21 give it protection. In effect, you are forever taking
22 reserves out of what would be the timber base from the
23 perspective of my clients?

24 A. Yes, you would be, both through the
25 successive plans during the first rotation as you cover

1 the entire land base that would be the case; and, then
2 also, the case of any additional new information or new
3 developments that come forward, there would be
4 additional area that would be considered or withdrawn
5 from the land base, yes.

6 Q. But is there a point in the process
7 at which we say there is enough parkland or there are
8 enough moose for a particular area, or there are enough
9 of another species - not on the endangered species list
10 now, I am not talking about endangered species - and,
11 therefore, you shouldn't draw that circle, as my
12 clients do with blue ribbon around an area which
13 shouldn't be harvested because of a nest?

14 Is there at the moment any quantitative
15 way to make that kind of judgment that they are
16 sufficient?

17 A. No, there is not.

18 Q. All right. And let's take, for
19 example, the Woodland Caribou Park exhibit that Ms.
20 Swenarchuk used in her cross-examination, Exhibit 892.
21 As we know, there are wildlife and other values
22 deserving of protection that are found in this park and
23 Ms. Swenarchuk asked Mr. Multamaki if similar species
24 were not found in the adjacent Crown unit for which he
25 was responsible, and he described in his evidence that,

1 no, in fact, topographically you are dealing with a
2 different area.

3 But I ask the question, so what? What if
4 it was the same topographical area, what if it was
5 similar and you had similar species. Maybe I can ask
6 you, Mr. Kennedy, or even start with Mr. Multamaki but
7 then Mr. Kennedy.

8 Do you agree that even if it was
9 topographically similar that a blue ribbon should be
10 drawn around the Red Lake Unit to prohibit harvesting
11 because it has species that are already protected in
12 the park setting next door?

13 MR. MULTAMAKI: A. I think to -- I guess
14 your scenario of putting a blue ribbon around the
15 entire Red Lake Crown Management Unit and saying timber
16 activities will not take place here, I wouldn't agree
17 with that, no.

18 I would say that the two, in fact, should
19 be -- go hand-in-hand or the two activities, I would
20 think, could take place on the same land base without,
21 I guess, endangering or, as Mr. McNicol has put it,
22 impacting on the population to the extent that it isn't
23 a viable population in Ontario.

24 So I would say that, no, I don't think
25 that it should be removed from timber harvesting.

1 Q. Mr. Kennedy?

2 MR. KENNEDY: A. I would agree with Mr.
3 Multamaki's comments.

4 Q. So in effect what -- if I understand
5 Mr. Multamaki, if the same topographical features
6 existed and the same species existed in the Red Lake
7 Crown Management Unit as did in the park, it's your
8 view that you would be able to harvest, perhaps with
9 certain modified prescriptions, within that area and
10 the two would live side-by-side?

11 MR. MULTAMAKI: A. Yes, I would agree
12 with that. I should also clarify the fact that a
13 number of the species that were listed in that park
14 master plan or whatever or the park listing also occur
15 outside of the park and, in fact, do occur on the Red
16 Lake Crown Management Unit and I think I made a point
17 of pointing that out that things like mink, muskrat,
18 moose, caribou and so on are, in fact, outside of the
19 park as well.

20 It was really a geographical or
21 topographical change that was the difference with
22 admittedly some difference in species, wildlife, flora
23 and fauna species.

24 Q. But the fact is; is it not, that
25 there is no harvesting permitted whatsoever in the area

1 of the park?

2 A. That's correct.

3 Q. So that what Ms. Swenarchuk is trying
4 to suggest by extension of the buffer zone or park that
5 there should be no harvesting outside of that area
6 merely because the same species exists, is something
7 that you wouldn't accept?

8 A. I don't think I would agree with
9 that.

10 MR. McNICOL: A. Mr. Cosman, if I might
11 add something. One of the objectives of the park and
12 ANSI system in Ontario obviously is to protect unique
13 or rare land forms, life forms and that type of thing.

14 In the creation of Woodland Caribou
15 Provincial Park one of the objectives was to protect a
16 relatively unique - for Ontario anyway - habitat type
17 and associated vegetative and animal community.

18 Ms. Swenarchuk's questioning related to
19 whether we were looking for those same types of
20 habitats and creatures outside of the park. When the
21 park was created - I hate to use the word - but my
22 understanding is that particular habitat type was
23 buffered by more common boreal type to ensure that that
24 unique feature was adequately protected.

25 So Ms. Swenarchuk perhaps was suggesting

1 that perhaps that unique feature extended outside of
2 the park and should be looked for. Well, when the park
3 was created those characteristics were identified and
4 captured within the park so that, in essence, that
5 particular unique feature was adequately protected.

6 Q. All right. I don't quarrel with
7 anything you've said, it helps with the understanding
8 of this. My point is that even if the unique
9 communities of species that are protected within the
10 park are to be found outside of it, is that a reason
11 for drawing the -- or wrapping the blue ribbon around
12 that area to put it into a reserve with a no harvesting
13 and renewal sign on it?

14 And I think that the Ministry has made
15 it's position clear that that is not how it approaches
16 management of the forest.

17 A. And I would agree with that. The
18 park and ANSI system captures those features across
19 Ontario where they exist.

20 It's not to say that that is the only
21 place that those features exist. And I would concur
22 with Mr. Kennedy and Mr. Multamaki that, in those
23 situations where they exist outside of a park setting,
24 that we can adjust forest management activities, if you
25 will, in most situations to accommodate them.

1 Q. Can any of the panel help me and the
2 Board with respect to whether any economic study has
3 been made by the Ministry as to the impact of this
4 reserve creation on the forest industry base in
5 Ontario?

6 THE CHAIRMAN: You mean relating just to
7 parks?

8 MR. COSMAN: The creation of reserves,
9 not just parks.

10 THE CHAIRMAN: Not just parks.

11 MR. COSMAN: Q. Just generally, whether
12 any economic or socio-economic study has ever been
13 done?

14 MR. KENNEDY: A. I am not aware of any
15 such study.

16 Q. I am going to move to another topic
17 and that is the composition of the planning committee
18 and perhaps, again, I will address this to you because
19 of an earlier comment, Mr. Kennedy.

20 First of all, as I understand the
21 composition of a timber management planning committee,
22 members as compared to advisors have to be present or
23 are committed to be present at all meetings and also
24 have writing responsibilities and participate in the
25 writing of the plan?

1 A. You are correct, those are the
2 expectations that we have of the planning team members.

3 Q. And advisors are called in as and
4 when needed with respect to the particular expertise
5 they have which can be brought to bear on specific
6 problems within the planning -- within area?

7 A. Yes, that is correct.

8 Q. Now, given the desirability -- the
9 obvious desirability of having a planning committee of
10 manageable size and given the prescriptions that are in
11 place with respect to water quality such as the Code of
12 Practice for Upgraders in Riparian Areas, the Timber
13 Management Guidelines for the Protection of Fish
14 Habitat and the Environmental Guidelines for Access to
15 Roads and Water Crossings, can you assist me - because
16 I may have missed it - as to what expertise in the
17 preparation of a plan is the Ministry of Natural
18 Resources missing that would require MOE membership on
19 the planning committee?

20 We are not talking about them being
21 advised, but what would require membership on the
22 committee from the perspective of expertise; what don't
23 you have?

24 A. The only one that comes to mind is
25 expertise in the area of air quality, but beyond that I

1 cannot think of anything in particular.

2 Q. And does air quality play a part
3 generally in the preparation of plans?

4 A. Generally not. There has been some
5 question as to if it is a concern relative to
6 prescribed burning and the two ministries have
7 undertaken discussions on that matter and I believe
8 awaiting some scientific examination of that particular
9 end.

10 Q. Is that an area where the Ministry of
11 the Environment could assist in an advisory capacity
12 rather than through membership on the committee?

13 A. Yes, it is. And they could also
14 assist in the preparation of guidelines and
15 implementation manuals to ensure that any relevant
16 findings of such scientific evidence are incorporated
17 into standard practices such as their involvement in
18 the preparation of the water quality aspects of the
19 fish habitat guidelines.

20 Q. If I now may ask you to go to Exhibit
21 700 the draft terms and conditions. My question for
22 Mr. Bisschop, just a very short question with respect
23 to page 9, Item 15(b)(i).

24 MRS. KOVEN: Mr. Cosman, what exhibit is
25 that?

1 MR. COSMAN: It's Exhibit 700, the draft
2 terms and conditions.

3 THE CHAIRMAN: What number condition?

4 MR. COSMAN: 15(b)(i), page 9.

5 Q. 15(b), and I am going to ask just a
6 specific question to Mr. Bisschop with respect to what
7 the requirement of the environmental analysis is as set
8 out in sub (i) where it says, Mr. Bisschop, that:

9 "The identification of the potential
10 environmental effects and determination
11 of the significance of those effects must
12 be part of the analysis."

13 Is it the Ministry's view that the
14 economics of the effects; that is, the environmental
15 effects, must also be considered in considering
16 alternatives?

17 MR. BISSCHOP: A. Yes, exactly. We
18 would consider costs as part of the term environment.

19 Q. Okay. Mr. Bisschop, again. Now, I
20 understand that - and perhaps you are the wrong
21 person - but you yourself have not prepared a timber
22 management plan, as I understand?

23 A. That's correct.

24 Q. And your contribution has been on the
25 theoretical and conceptual level in this area?

1 A. That's correct.

2 Q. But perhaps then I might ought to
3 direct this to Mr. Multamaki or Mr. Fleet. With
4 respect to area of concern planning, am I correct that
5 area of concern planning involves considerably more
6 than -- more time than normal operation planning?

7 MR. MULTAMAKI: Yes, it does.

8 Q. And does the level of documentation
9 in area of concern planning reflect the effort that is
10 put into the decision-making or necessarily the
11 correctness of the decision made, given the amount of
12 time that is involved?

13 A. Could you repeat that? I am not sure
14 I follow you.

15 Q. All right. With respect to the level
16 of documentation that is required, my question was: In
17 area of concern planning, does the level of
18 documentation itself reflect the effort that is put
19 into the decision-making; can it?

20 A. I think it does reflect the amount of
21 effort that went into the decision-making. For
22 example, it's quite common, I spent a great deal of
23 time on a relatively complex issue and the
24 documentation may, in fact, be substantial as a result
25 of the time spent, and I refer to situations like

1 Little Vermilion Lake.

2 Q. And even if it isn't substantial,
3 does the effort some time -- is the effort that is
4 expended greater than that which you would consider was
5 expended if you look at the document itself?

6 A. Yes. I think it's a fair statement
7 to say that the amount of effort expended on the area
8 of concern -- individual areas of concern and the area
9 of concern package as a whole is fairly substantial.

10 MR. McNICOL: A. Mr. Cosman, just on
11 that point, and it was a point that was talked around
12 yesterday but, in my view, was never nailed. Just
13 because you have got a lot of good documentation does
14 not necessarily mean that you have a good prescription
15 and the converse is also true.

16 But with talking about the Red Lake Plan,
17 I think one of the points that was talked around but
18 was never -- the prescriptions were good. You could
19 fault the documentation, but the prescriptions were
20 good.

21 Q. All right. Well, let me take you to
22 that, because it was suggested by Ms. Swenarchuk that
23 she was challenging the credibility of the planning
24 committee and the planning team, she was also
25 challenging the correctness of the decisions made.

1 And I believe she didn't want to hear
2 your answer on that and, quite correctly, the Chairman
3 said: Mr. Multamaki, as a member of the team could
4 give the best evidence and he did.

5 But I want to ask you that question from
6 a different perspective, not from a perspective of
7 being a member of the team, but from the perspective of
8 being a biologist. And perhaps I should set the
9 framework for the question by asking you whether or not
10 you reviewed all of the area of concern decisions that
11 were made with the biologist on the team?

12 A. Yes, I did.

13 Q. And did that take some considerable
14 time?

15 A. It did.

16 Q. And my question to you is: Leaving
17 aside the documentation of the decision, what is your
18 opinion as to the environmental soundness of the
19 decisions and the prescriptions that were made?

20 A. In my opinion, and obviously it was
21 necessary to speak to the biologist involved in the
22 prescriptions because you just don't know the whole
23 story unless you talk to the biologist with regard to
24 local conditions and such, but having talked to Mr.
25 Sobchuk --

1 Q. You reviewed each of the
2 prescriptions with him?

3 A. Each one, yes.

4 Q. Yes?

5 A. I could find no prescription that
6 would not ensure that environmental impacts were
7 mitigated.

8 Q. So you don't agree with the comment
9 of Ms. Swenarchuk to the Board that the decision of the
10 planning team or the decisions of the planning team
11 were not credible or correct?

12 A. No, and I think the basis of her
13 argument was that because she could not trace the
14 rationale through the documentation, therefore, by
15 necessity the decision had to be wrong, and that is
16 faulty reasoning, in my view.

17 Q. All right. Just one final question,
18 and this is for the whole panel, and I don't know if
19 anyone of you can answer it, but let me try.

20 It has to do with the cost of preparing a
21 timber management plan. Apart from any additional
22 requirements that may be imposed by the Board and apart
23 from the whole issue of individual environmental
24 assessments that may be caused by bump-up, can you
25 assist the Board or can any of you assist the Board

1 with what the approximate cost of preparing such a plan
2 is?

3 MR. FLEET: A. Mr. Cosman, I may be able
4 to help you there. Through some cursory methods in one
5 instance, almost a back-of-the-envelope calculation,
6 and then in a couple of other instances through asking
7 certain plan authors the costs of production of timber
8 management plans, and then through a - I wouldn't
9 describe it as a rigorous - but through a very brief
10 analysis of the costs of the different components of
11 the preparation of the plan such as the public
12 consultation stages and so forth and so on, I was able
13 to ascertain that an average direct cost of preparation
14 of a timber management plan is to the tune of a quarter
15 million dollars.

16 Q. And this would be apart from -- I am
17 sorry, this is the planning at what point in time?

18 A. This is for the preparation of a
19 timber management plan with the associated costs of
20 information centres, preparation of documentation,
21 maps, so forth and so on.

22 Q. That is preparation in accordance
23 with the Class Environmental Assessment Document?

24 A. And the Timber Management Planning
25 Manual, yes.

1 Q. And the Timber --

2 A. And the associated Class EA
3 provisions. It generally wouldn't include the cost of
4 any additional special inventories.

5 Q. So that is a base cost?

6 A. That would be what I would describe
7 as an average cost. There was one individual who
8 indicated the cost of a plan was about \$150,000 and
9 that was for a management unit that was two townships
10 in size. So that was not representative.

11 MR. MARTEL: Is there any difference,
12 might I ask, between what a company's cost might be in
13 that -- a plan prepared by a company as opposed to the
14 Ministry, or have those figures been the same?

15 MR. FLEET: That is a blended value, Mr.
16 Martel.

17 MR. MARTEL: And there is no difference
18 between a Crown management unit, let's say operated by
19 the Ministry, as opposed to one, an FMA for example?

20 MR. FLEET: Well, the only difference
21 would be that with respect to the development of an FMA
22 plan, the Ministry would cover the public consultation
23 costs and they would pick up a considerable portion of
24 the rest of the costs of plan production; whereas for a
25 Crown plan, the Crown generally would pick up all the

1 costs.

2 MR. COSMAN: Thank you very much. Those
3 are my questions.

4 THE CHAIRMAN: Thank you, Mr. Cosman.

5 CROSS-EXAMINATION BY MR. CASSIDY:

6 Q. Mr. Fleet, I just want to ask you
7 some questions about Exhibit 895A.

8 MR. CASSIDY: That is the document that
9 was entered this morning, Mr. Chairman, in respect of
10 the Marceau Lake matter.

11 Q. I assume, since you had some
12 knowledge of that as indicated by your answer this
13 morning, Mr. Fleet, that you are the proper person to
14 address these questions to?

15 MR. FLEET: A. I will do my best.

16 Q. Thank you. I hope you will. My
17 questions relate to the chronology involved here and I
18 just want to ask you about some timings and the length
19 of time it has taken the Ministry of the Environment to
20 deal with this individual assessment request, and this
21 won't take long, but I think the dates are helpful to
22 illustrate.

23 As I understand it, by looking at the
24 front of this exhibit, 895A, we see a letter dated
25 March 21st, 1988, over a year and a half ago from the

1 cottagers association requesting that there be an
2 individual assessment of this particular aspect of the
3 TMP or the TMP in question?

4 A. Yes. That is the letter of the
5 individual EA designation request, yes.

6 Q. And then we understand from Mr.
7 Freidin that on April 11th, 1988 - and indeed from the
8 letter which I will refer to in a minute from the
9 Ministry that is contained in this package - that on
10 April 11th, 1988 the information package which has now
11 been filed as Exhibit 895B was sent from the Ministry
12 of Natural Resources to the Minister of the Environment
13 less than a month after the request was made of the
14 Minister of the Environment for the individual
15 assessment; is that correct?

16 A. That is correct.

17 Q. And then over three months later the
18 Minister of the Environment then acknowledges to the
19 cottagers association that they received the request
20 and used the words:

21 "Thank you for your recent letter
22 regarding a letter that was sent three
23 months ago."

24 A. Yes, that would be the letter dated
25 June 30th.

1 Q. And I note, and can you confirm for
2 me, that there does not appear to be a copy of that
3 letter sent to the Quebec and Ontario Paper Company,
4 the company involved in this matter whose TMP was in
5 question? And I am referring to the last page of
6 Exhibit 895A. There does not appear to be a copy of
7 that letter sent to that company; is that correct?

8 A. That is correct. On several
9 occasions the company has contacted MNR to find out
10 what the status of the request is. We have tried to
11 provide them with information, but they were not
12 apparently getting it directly from MOE.

13 Q. I see. And MOE was aware by virtue
14 of the letter from the cottagers association in March
15 of 1988 the Quebec and Ontario Paper Company was the
16 company involved and, in fact, in your information
17 package in April -- dated April 11th, 1988 that was
18 also noted as well.

19 So MOE had notice right from the very
20 beginning that Quebec and Ontario was involved in the
21 process; is that right?

22 A. Yes, they did.

23 Q. Mm-hmm. So then we see, as I
24 understand it, that -- the next letter I see flowing
25 here is dated January 3rd, 1989 from your Ministry to

1 the Director of the Environmental Assessment Branch,
2 Mr. Ward, and that is some three, four pages into the
3 materials in Exhibit 895A, Mr. Chairman, saying what is
4 happening to this request in essence and reminding the
5 Ministry of the Environment that they sent that package
6 on April 11th.

7 And correct me if I've misstated the
8 essence of that letter?

9 A. No, you haven't, and I also would
10 suggest that my information indicates there was
11 additionally a letter dated July 4, 1988 from MNR to
12 MOE.

13 Q. Oh, so it's not in this letter, but
14 there was a letter in July 4, 1988 saying --

15 A. There was an additional letter, I
16 can't produce it right now, but my information is that
17 there was indeed yet another additional letter from MNR
18 to MOE of inquiry.

19 Q. Do you recall any response from MOE
20 in respect of that letter?

21 A. I don't, but that particular -- no, I
22 don't.

23 Q. Okay. Well, let's move on then. It
24 appears that we then see a letter some, oh, about five
25 pages in, Mr. Chairman, by way of a memo apparently

1 from Mr. Ward to your Regional Director Mr. Riley
2 responding to the letter, or to a letter from Mr.
3 Chevalier dated January 10th, 1989.

4 I assume that that too is an error and
5 should be the letter dated January 3rd, 1989 from Mr.
6 Chevalier that I referred to earlier; is that correct?

7 A. Yeah. What it says is that the
8 letter was received January 10th, but it does indicate
9 to me that that would have been the January 3rd letter.

10 Q. Okay. I'm not asking you to indicate
11 what the Ministry meant in their letter but, in
12 essence, that was -- it appears to me to be the first
13 time that MOE has shown an interest in this and they
14 asked for some further information but only after they
15 received your letters that you have indicated earlier;
16 is that correct?

17 A. Except for at the very initial outset
18 where there was some dialogue within approximately the
19 first month of the designation request for an
20 information package.

21 Q. When the information package was
22 sent?

23 A. Between then and this particular
24 letter. I don't understand if there was any dialogue
25 with MNR by letter.

1 Q. All right. So then June 16th, 1989
2 you respond with your information - and by you, I mean
3 the Ministry of Natural Resources - I understand it was
4 written by Mr. Kenrick who was a witness in Panel 6.

5 You respond with the information saying:
6 Please advise us. In essence, we still haven't heard
7 what is happening and, in fact, correcting what
8 appeared to be several misunderstandings that Mr. Ward
9 had as illustrated by his earlier memo.

10 Is that a fair assessment of that memo?

11 A. Yes.

12 Q. And then we see nothing further in
13 this pile of materials. Now, my information is as of
14 this morning there is still no decision from the
15 Ministry of the Environment with respect to this
16 request by the cottagers association for an individual
17 assessment.

18 Can you confirm if that is also your
19 information?

20 A. That is my information, yes, at this
21 point in time.

22 Q. All right. And that is over a year
23 and a half after the request is made?

24 THE CHAIRMAN: Mr. Fleet, do you have any
25 information as to whether the Ministry of the

1 Environment has referred this matter to EAAC, the
2 Environmental Assessment Advisory Committee on this?

3 MR. FLEET: Yes, Mr. Chairman. If you
4 refer to that same exhibit, I think there is a single
5 handwritten page titled: Project Information Summary,
6 it's completed January 16th, 1989.

7 MR. FREIDIN: Mr. Chairman --

8 MR. CASSIDY: That doesn't appear in my
9 exhibit.

10 MR. FREIDIN: It may not appear in the
11 actual exhibit, but it was in the material that comes
12 from the Environmental Assessment Branch file. Perhaps
13 we could file that again as part of Exhibit 895.

14 THE CHAIRMAN: 895B.

15 MR. FREIDIN: 895B, just additional
16 information to supplement the entire Environmental
17 Assessment Branch files, so that you would have the
18 complete file in front of you.

19 MR. FLEET: With respect to your
20 question, Mr. Chairman, what is indicated on that
21 project information summary which was prepared by a
22 member of the Ministry of the Environment, it indicates
23 that they received the request --

24 MR. FREIDIN: Excuse me, Mr. Fleet, just
25 one moment. I will get an extra copy here. Perhaps

1 mark this one -- well, I could copy it for the Board.

2 (handed)

3 THE CHAIRMAN: All right.

4 MR. FLEET: It indicates that they
5 received the request on April 5. They acknowledged the
6 request on June 30th, and that EAAC was advised on
7 April the 15th of 1988.

8 MR. KENNEDY: Mr. Chairman, that
9 particular piece of paper was provided to the witnesses
10 by Mr. Lindgren. For your information, the author of
11 that, Wes Green, is a Ministry of the Environment
12 employee. Excuse me, he was.

13 THE CHAIRMAN: I am not sure what
14 happens - I am not sure that anything turns on it at
15 the moment - when something is referred to EAAC as to
16 whether or not there is a procedure in place to the
17 effect that the Ministry of the Environment or the
18 Minister cannot then deal with it until he has received
19 the report, if any, from EAAC.

20 Because, as you are aware, EAAC has the
21 jurisdiction if they want to hold public hearings, but
22 it is my understanding - I maybe wrong in this - that
23 when it is referred to EAAC, it is referred within some
24 kind of time frame with the Minister indicating that he
25 expects a response from EAAC within a certain time

1 frame. Again, I am not positive about that, but...

2 MR. CASSIDY: That may very well be, Mr.
3 Chairman, and I would look forward to hearing from MOE
4 on this by way of evidence, if they have anything to
5 offer.

6 Perhaps I can put a further question on
7 this matter to Mr. Fleet and thank you very much for
8 bringing that to my attention.

9 Q. I would like to take you back to Mr.
10 Ward's letter dated April 7th, 1989 which is contained
11 in Exhibit 895A which indicates at the very bottom that
12 the Minister's expected to make a decision on the
13 designation request soon.

14 That is the very last page of that
15 letter, page 2, and there is no reference there to EAAC
16 in that letter and there is no reference in that letter
17 to the fact that he is awaiting that decision from
18 EAAC; is that correct?

19 MR. FLEET: A. That's correct.

20 Q. And there is also no reference in
21 that one-page document you have just referred us to
22 that says EAAC will be making a decision on that; is
23 that correct?

24 A. That is correct as well, yes.

25 Q. And, in any event, EAAC was advised

1 in April of 1988, according to that one-page document
2 from Mr. Green, of the request; is that right?

3 A. Yes.

4 Q. Okay.

5 MR. CASSIDY: Those are all the questions
6 I have on that, Mr. Chairman. I want to move now
7 and --

8 THE CHAIRMAN: If I might ask, what was
9 the point of that line of questioning other than
10 establishing that there is a significant time lapse
11 between the original request and today when no decision
12 has been rendered?

13 MR. CASSIDY: The point is very simply
14 this, Mr. Chairman, and I can expect that you will hear
15 further evidence in respect of bump-up from other
16 parties and in respect of bump-up from my client about
17 the nature in which it is done, the nature in which it
18 is carried out and, to the extent that this Board is
19 able to comment on bump-up, my client may be making
20 recommendations as to how its dealt with and a year and
21 a half delay is not one of them.

22 THE CHAIRMAN: And you will be putting
23 forward evidence as to, in the interests of your
24 client, the timeliness in terms of impact on your
25 client of any bump-up provisions?

1 MR. CASSIDY: I certainly expect that
2 will be the case and I can assure you, once again, that
3 a year and a half is not considered timely by my client
4 and, in particular, Quebec and Ontario Paper, and I am
5 sure by the cottagers association, although we haven't
6 heard a complaint from them, at least in writing, in
7 the material that you have before you.

8 THE CHAIRMAN: Okay.

9 MR. CASSIDY: Q. Now, if I can move on
10 to Mr. Churcher and just briefly dealing with some
11 evidence that you discussed last Tuesday, that is
12 October 3rd, Mr. Churcher, and it relates to some
13 evidence that you discussed about the bacterial and
14 chemical insecticide usage in this province.

15 It's not necessary for you to go back to
16 the transcript because you were very brief but, in
17 essence - and you can correct me if I'm wrong - what
18 you said was at that time -- and for your reference,
19 Mr. Chairman, if you wish to check the transcript
20 later, it's page 24321.

21 Q. But, Mr. Churcher, at that time you
22 said that there was a proposal made by the Ministry's
23 budworm committee in the fall of 1986 for the use of
24 chemical insecticides in the Nipigon District and that
25 proposal was accepted by the Ministry's regional

1 director?

2 MR. CHURCHER: A. Yes.

3 Q. And can you tell me, sir, which
4 region was that?

5 A. That would be the northcentral
6 region.

7 Q. All right. And I understand that
8 that proposal was being made for the 1987 spray season,
9 notwithstanding you were discussing this matter in what
10 I think you indicated was November of 1986?

11 A. That would be correct.

12 Q. All right. Now, I believe your
13 evidence last Tuesday was that before this proposal
14 made it's way to the Minister's office, the Minister
15 announced that only BT, the bacterial insecticide,
16 would be used in the 1987 spray program?

17 A. Yes, that's correct.

18 Q. Now, my question is the same to you
19 as the one that was asked by my colleague Ms. Cronk
20 when she cross-examined you on June 14th, I know that
21 is some time ago.

22 That's Volume 112, Mr. Chairman.

23 MR. CHURCHER: A. I remember it well.

24 Q. I will tell her that. But my
25 question relates to the decision of the Minister made

1 by or made in November, the one you have just indicated
2 November of 1986 for the 1987 program.

3 And my question is: Would you simply
4 agree with me that when this decision was made by the
5 Minister there was no report to him which provided or
6 suggested a scientific basis upon which to limit the
7 use of chemical insecticides on safety or environmental
8 risk grounds?

9 A. Yes, I would agree with that.

10 Q. And am I also correct that since 1987
11 and to date there has been no report prepared by you or
12 your staff that recommends that the use of chemical
13 insecticides be prevented or limited due to
14 environmental safety or risk reasons?

15 A. Yes, that is a correct statement.

16 MR. CASSIDY: Those are my questions.

17 Thank you, Mr. Chairman.

18 THE CHAIRMAN: Thank you, Mr. Cassidy.

19 Okay, ladies and gentlemen, that
20 concludes the Industry's examination. We will rise for
21 the lunch hour, return at two o'clock.

22 Thank you.

23 ---Luncheon recess taken at 12:25 p.m.

24 ---On resuming at 2:05 p.m.

25 THE CHAIRMAN: Thank you. Be seated,

1 please.

2 Mr. Edwards, you indicated you might be
3 some three hours approximately?

4 MR. EDWARDS: No, I will be the rest of
5 the afternoon and a couple of hours probably on
6 Tuesday, Mr. Chairman--

7 THE CHAIRMAN: Oh, I see. Okay, very
8 well.

9 MR. EDWARDS: --to finish. I undertake
10 that I will finish by 2:59 p.m. on Tuesday.

11 THE CHAIRMAN: All right, because we have
12 arranged or having arrangements made with Mr. Hanna to
13 be ready to start next Tuesday at 3:00 after you are
14 finished, except you now may finish earlier; is that
15 what you are saying?

16 MR. EDWARDS: I could finish earlier on
17 Tuesday, yes.

18 THE CHAIRMAN: All right. We will have
19 him ready to go for the afternoon session in any event.

20 We are going to start off the morning
21 with hearing from counsel on their suggestions for
22 shortening this hearing, and we were going to deal
23 perhaps with rescoping Panel 16 later in the day some
24 time when we've had an opportunity to review the
25 revised statements of issue coming out.

1 MR. KENNEDY: Mr. Chairman, is there a
2 set time then for the panel to be prepared to come on,
3 or would you expect us to wait out...

4 THE CHAIRMAN: Well, I don't know exactly
5 how long it's going to take in the morning. We would
6 imagine, if we get into a full discussion, it could
7 well take an hour or even two. We view that whole
8 exercise as of some importance in the overall scheme of
9 things, but that should still allow you enough time to
10 be able to finish before three o'clock.

11 MR. EDWARDS: Lots of time, Mr. Chairman,
12 yes.

13 THE CHAIRMAN: Okay.

14 MR. EDWARDS: Mr. Chairman, before I
15 commence, I advised my friends and the hearings liaison
16 officer that I had only one small exhibit which I
17 intended to refer to, being 854.

18 I will be referring to some of the
19 regulars such as the Timber Management Planning Manual,
20 the Class EA Document, but I think most of them are
21 pretty much the regulars. Exhibit 700 as well, is the
22 terms and conditions, I would assume the Board has that
23 with them.

24 THE CHAIRMAN: Yes, we do.

25 MR. EDWARDS: Mr. Chairman, I propose to

1 put my questions to the panel with respect to
2 particular terms and conditions that are set out in
3 Exhibit 700 and with respect to those particular terms
4 and conditions on which my client joins issue with the
5 Ministry and has some concern about the proposal, and I
6 will try to follow that along in some numerical order
7 and I intend to start with term and condition No. 1
8 which is the planning team. I will ask Mr. Kennedy
9 this, if I may.

10 CROSS-EXAMINATION BY MR. EDWARDS:

11 Q. If I may set it out, Mr. Kennedy,
12 where my client would differ with the Ministry's
13 proposal is that it would believe that NOTOA or some
14 other appropriate local representative of the tourism
15 industry should have at least one person who acts as a
16 full member of the timber management planning team.

17 I understand that your previous evidence,
18 sir, was that the composition of the timber management
19 planning team would lead to improved information
20 sharing and issue resolution. That is the proposal as
21 it now stands?

22 MR. KENNEDY: A. Yes, it is.

23 Q. And you have confirmed that improved
24 information sharing and issue resolution is one of the
25 admirable qualities of the present timber management

1 planning team?

2 A. Yes, I do.

3 Q. And I know Ms. Swenarchuk asked you
4 at some length questions on the issue of why other
5 persons could not become members, but I am not quite
6 certain that there was an answer to the question.

7 So I will put the question to you and
8 quite simply: What is the difficulty involved in
9 having a representative of the tourism industry as a
10 member of the timber management planning team?

11 THE CHAIRMAN: Is that a representative
12 of NOTOA?

13 MR. EDWARDS: Well, in all cases it need
14 not be. NOTOA is perhaps not an organization which
15 will exist for ever and ever, amen, and we certainly
16 hope the timber management planning will.

17 However, it's the view of my client that
18 either NOTOA or some other representative of a local
19 tourist concern ought to be a member of a timber
20 management planning team in each management unit, and
21 that would be a term or condition which we will be
22 proposing at some stage.

23 Q. So, Mr. Kennedy, could you identify
24 what the problem is, if any, with having a member of
25 the tourism industry?

1 MR. KENNEDY: A. I think there a number
2 of problems that could arise, but not specifically to
3 having a member of the tourist industry, but just
4 having more members of the planning team.

5 I would suggest that a planning team
6 functions at best with as few a number of people as
7 possible in allowing for access of those members to
8 information that they need in order to make their
9 decisions.

10 So, as such, I don't feel it's necessary
11 that there be representation from every type of
12 stakeholder that exists in the area to be members on
13 the planning team.

14 THE CHAIRMAN: Well, Mr. Kennedy, isn't
15 that one of the major concerns: How do you draw the
16 line, and if you allow a member of the tourist industry
17 in, why not allow a member of conservation industry in,
18 or why not allow a member of the wildlife group in?

19 MR. KENNEDY: Yes, you are very correct,
20 Mr. Chairman, we've often --

21 THE CHAIRMAN: How do deny one member or
22 one group representation unless you are doing it on
23 some basis that the interests they represent are
24 somehow ranked, and that could get you into, I would
25 suggest, some further problems.

1 MR. KENNEDY: Certainly the phrase that
2 you use 'where do you draw the line' is a question we
3 have asked ourselves in deliberations we've had with
4 proposing term and condition No. 1, and we felt it was
5 best to curtail it to full members being members of
6 government agencies that were more likely to be in a
7 position to be present at all times for the planning
8 team meetings, that we strike the committees with MNR
9 employees primarily that we make up committees
10 available for advisors to be part of the planning team
11 to represent specific concerns and, as such, that is
12 how we have dealt with the tourism representation,
13 through the Ministry of Tourism and Recreation.

14 MR. FLEET: And if I could just add to
15 that with an example. We are currently in the process
16 of striking -- at the very initial stages of striking a
17 planning team for the Timmins Crown Management Unit and
18 with respect to the question of planning team
19 membership and even planning team advisors, what we had
20 to look at in that particular instance was -- in terms
21 of possible membership either in an advisory capacity
22 or in membership was the City Council, the Board of
23 Trade, the Chamber of Commerce, there is a heavy mining
24 influence of some -- of one or possibly more than one
25 representative from the mining industry, there is a

1 conservation authority that could potentially be
2 included, some representative from MTR or tourism,
3 Ministry of the Environment, Citizenship and Culture.

4 And at that point, we are up to
5 potentially nine additional members to a planning team
6 and that is without including any special interest
7 groups above and beyond the sort of standard. So in
8 that sense we are already at, in my estimation, an
9 unworkable number.

10 MR. EDWARDS: Q. Well, sir, I will
11 address this again to Mr. Kennedy. Is that problem
12 that you perceive one of sort of the floodgates
13 argument, there will just be so many people on the
14 committee that it will become unworkable?

15 MR. KENNEDY: A. Yes, I would suggest
16 that is part of the discussion, yes. As well as, we
17 feel that we can provide adequate opportunities to get
18 representation of concerns in other avenues rather than
19 having a full-time member of the planning team there
20 from the tourist industry point of view.

21 Q. Sir, you will agree that one of the
22 advantages of membership is not just that the member --
23 individual member can bring information to the
24 committee, but also that the individual member can take
25 information received from the committee?

1 A. Yes, I do share that opinion.

2 Q. All right. And have you considered
3 any sort of executive structure on committees which
4 would allow identified concerned interest groups to
5 have representation in some form on the committee which
6 would allow them to at least learn from the committee
7 as much as contribute to the committee?

8 A. I can't say we have given thought to
9 that kind of a structure, no. What does come to my
10 mind though is the kind of day-to-day contacts that we
11 have locally both with individual tourist operators as
12 well as the contacts that we have with tourist
13 organizations such as NOTOA and more locally-based
14 agencies such as Kenora District Camp Owners
15 Association, Vermilion Bay Camp Owners Association, and
16 the kind of contacts we have with those people and
17 exchange information on a, I'd say -- perhaps I
18 shouldn't say a day-to-day basis, but it's certainly a
19 frequent basis, and the contacts we have in that regard
20 provide an information flow.

21 Q. Is your concern about membership of
22 this other person or persons, it is a concern only on
23 the manageability as opposed to a philosophical one,
24 the fear of the private sector or something?

25 A. No, I don't think it's fear of the

1 private sector in any regard. I think the Chairman has
2 characterized it best as in terms of 'where do you draw
3 the line' in terms of membership, as well as the
4 suggestion that we can provide adequate opportunities
5 to ensure that their concerns -- tourism concerns are
6 addressed, as I have indicated, in those variety of
7 fashions as well as through the normal public
8 consultation process procedures that we have in place
9 which, I believe you are aware of, includes a variety
10 of public notices as well as direct mailings to those
11 individuals that are affected in an area.

12 Q. Whatever the size of this committee,
13 the decision is ultimately made in the proposal by the
14 district manager; correct, there is no voting?

15 A. The decision -- there is no voting.
16 The decisions would be made by the planning team and if
17 they are -- not all planning teams have district
18 managers present on them but, you are correct, if there
19 was a need for some resolution, that ultimately the
20 district manager would be called in, yes.

21 Q. So the difficulty of resolution of
22 the conflict is not a problem; notwithstanding the
23 committee has 5 members or 15 members?

24 A. I would say that resolution of issues
25 is always something that can result in problems. It's

1 not an easy task, particularly with the wide number of
2 resources we have and the differing interests that we
3 have faced with with the variety of stakeholders we
4 have.

5 Q. But the actual resolution, sir, it
6 will, if necessary, be made by the district manager.
7 So in that case the size of the committee is
8 immaterial; would you agree with that?

9 A. No, I don't think I would agree with
10 that in that the -- if I could put it this way, simply
11 the more opinions that are involved in decisions could
12 cloud the issues being discussed.

13 Q. You might have livelier discussion
14 but certainly the decision would ultimately be made by
15 that one person?

16 A. In characterizing it, the decision
17 may necessitate involvement from the district manager,
18 but that is not the case in the majority of situations,
19 sir, decisions are being made by the planning team
20 members.

21 Q. Do you not believe that the affected
22 interest groups - and they are relatively
23 identifiable - do you not agree that those affected
24 interest groups would be more likely to adopt the
25 process if they are involved right from day one?

1 And I say adopt, I mean live with the
2 decisions that come out of the committee, understand
3 the decisions that come out of the committee?

4 A. I would agree with you and I would
5 also add that I believe that they are involved from day
6 one.

7 Q. There are several steps before the
8 invitation to participate is sent out?

9 A. Yes. Technically speaking, there are
10 a number of what I have termed administrative steps
11 that are involved prior to the invitation being sent
12 out. Those steps would be, first of all, the
13 identification of the need for a new timber management
14 plan, the striking of the planning team itself, as well
15 as the determination of the planning schedule.

16 All that takes place prior to the first
17 notice as part of the public consultation, so there is
18 some information that is worthy of informing the public
19 about, that particularly being the schedule as to the
20 time at which the plan development will occur in and
21 the work, if you will, or an invitation extended to
22 individuals to become involved early in the exercise.

23 Q. What about terms of reference, sir?

24 A. Yes, as part of the appointment of
25 the planning team the terms of reference are developed

1 and that would occur prior to the issuance of the first
2 public notice.

3 MR. FLEET: A. Mr. Edwards, if you would
4 refer to 813A, pages 252, 253, and 254, points 1
5 through 14.

6 Q. Yes, I appreciate that, Mr. Fleet.

7 A. That is an outline of some of the
8 administrative steps that did occur prior to the first
9 public notice.

10 Q. There are 14 administrative steps
11 prior to the issuing of the first public notice?

12 A. Yes.

13 Q. And the item No. 14 is the approval
14 by the regional director of the terms of reference and
15 the forwarding of the approved terms of reference -
16 this is set out at page 254 - an accompanying letter of
17 acceptance where applicable to the appropriate district
18 managers and regional directors?

19 A. Yes, yes.

20 Q. All right. Mr. Kennedy, is the
21 setting of the terms of reference a significant step?

22 MR. KENNEDY: A. Significant in what
23 way?

24 Q. In your view, sir? Could you answer
25 that yes or no, please?

1 A. Yes.

2 Q. Thank you. On the Crown unit, sir,
3 Mr. Kennedy, the company may not have a representative
4 in certain circumstances but generally does. How often
5 would that occur where a company would not have a
6 representative on the timber management planning team?

7 THE CHAIRMAN: Is this on a company unit
8 or a Crown unit?

9 MR. EDWARDS: On a Crown unit. I think
10 Mr. Kennedy's evidence was that sometimes if there is
11 not a particularly large licensee or large company on a
12 particular unit, sometimes they would not have a
13 representative.

14 MR. KENNEDY: Yes, I believe you are
15 making reference to the comments I made relative to
16 term and condition No. 1 in Exhibit 700 which is the
17 last line indicating that on Ministry-prepared plans
18 that it's possible that the district manager may invite
19 representatives from forest companies to participate.

20 That is a relatively new initiative that
21 we have added at the time of drafting these terms and
22 conditions and I can't advise you as to the frequency
23 of it. I would expect though, to date, it has been
24 infrequent and I think it would be by exception.

25 MR. COSMAN: Mr. Chairman, I think there

1 was a mistake by accident in the question itself. The
2 recommendation is that the company representatives be
3 invited back as advisors not as members.

4 MR. EDWARDS: Yes, I thank my friend for
5 that. I noticed that when I was referring to the term
6 and condition.

7 Q. On a Crown unit, can a company
8 representative, a timber management company
9 representative act as a member of the committee or are
10 they solely advisors?

11 MR. KENNEDY: A. Solely as advisors.

12 Q. I see. Do advisors receive
13 everything that all the other members receive in terms
14 of documentation, minutes, maps, et cetera?

15 A. Yes, I believe they would. When you
16 say maps, I would put a caution that the majority of
17 information flow would be exchange of minutes, memos
18 and some relevant information.

19 It would be unlikely that there would be
20 copies of maps made for planning team members as
21 individuals, it would be more of a collective process.

22 Q. Sorry, are you finished your answer,
23 sir?

24 A. Yes.

25 Q. And I'm sorry to interrupt you. Do

1 you see, sir, any problem in having a wider circulation
2 of the minutes and memoranda than exists at present?

3 A. You are suggesting to members or to
4 individuals other than members and advisors?

5 Q. Yes, sir. Do you see a problem with
6 that, any reason that it would be a difficulty for you?

7 A. Other than an administrative burden,
8 I don't think it would cause a lot of concern, no.

9 MR. FLEET: A. Mr. Edwards, I might
10 suggest that I could potentially foresee some
11 difficulty with a wider distribution of meeting minutes
12 than is currently the practice.

13 I am not saying we necessarily wouldn't
14 do that but, for example, several -- first of all,
15 minutes traditionally of meetings haven't been
16 necessarily meticulously and carefully prepared and if
17 we were to do that, then we would have to be a little
18 more cautious in our preparation.

19 And the reason I say that is because
20 there are some things included in meeting minutes which
21 are of a discussion nature and which are not decisions
22 but which are often, because of perhaps the less than
23 careful manner in which minutes are taken or prepared
24 now as an existing practice, could be interpreted as
25 such and could unnecessarily sound sirens or raise

1 flags that may not be beneficial to the process of
2 preparing a timber management plan.

3 Q. And that difficulty would have to be
4 dealt with by more careful preparation of the minutes;
5 is that what you are suggesting, sir?

6 A. That might help. I don't know if
7 that in itself would necessarily be the entire
8 solution. I think that given the discussion nature of
9 some of the planning team meetings and minutes, you
10 could be unnecessarily raising sirens and creating
11 issues out of non-issues.

12 Q. Thank you. I will move on to the
13 next term and condition on which we join issue with the
14 Ministry, that is No. 2. It has to do with public
15 consultation.

16 Mr. Kennedy, at 2(b), and throughout, the
17 term and condition refers to certain time periods in
18 which the public or interested persons may respond to
19 Ministry information or Ministry initiatives. You are
20 quite familiar with that, I am sure?

21 MR. KENNEDY: A. Yes, I am.

22 Q. Now, sir, just to identify very
23 clearly where we join issue with this public
24 consultation process, as you set it out, it would be
25 the view of my client that the time frame for public

1 involvement is too narrow.

2 The time that you have generally set
3 seems to be 30 days, certainly -- or at least 30 days
4 from the notice before the date of the information
5 centre. And then if you turn to page 3 of the terms
6 and conditions, Exhibit 700, it would indicate that
7 there is a period of 30 days after the information
8 centre in which interested persons may respond.

9 And, sir, just very briefly would you
10 agree with me that for persons who have -- are members
11 of organizations with boards who have other
12 commitments, who have a lot of material to review, that
13 30 days may be a very tight time frame?

14 A. I acknowledge that 30 days is a set
15 period of time. We have provided a 30-day response
16 period in each of the four occasions of public
17 consultation and it's something that is known well in
18 advance as to -- or, yes, known well in advance of when
19 the planning schedule, as to when those opportunities
20 will arrive.

21 I think it's possible for businesses,
22 individuals to schedule their time accordingly to allow
23 sufficient time to review information, and I believe
24 one of the keys that we have in this regard is inviting
25 people to get involved early at the outset, providing

1 them with some indication of the timing as to when
2 those opportunities will be coming, and providing them
3 that opportunity to come forth.

4 Q. Sir, your judgment from your side of
5 the fence is that the time is reasonable and
6 sufficient?

7 A. It's from the basis of my experience
8 that I make that comment, yes.

9 Q. You don't -- I do not believe your CV
10 reveals that you have experience in business or
11 industry.

12 A. You are correct in that regard. My
13 experience, though, is dealing with many tourist
14 operators and many individuals over a variety of years
15 in aspects of both timber management planning and other
16 resource planning.

17 THE CHAIRMAN: Well, let's ask it the
18 other way. Has there been complaints received as to
19 the time frames being too narrow?

20 MR. KENNEDY: Yes, Mr. Chairman, I have
21 had a number of complaints in my experience of time
22 frames being narrow and we have always endeavored to
23 accommodate those requests.

24 At times we have sent information to
25 individuals at our expense to locations outside of the

1 Province of Ontario to provide people with an
2 opportunity that we viewed was important to get their
3 input on.

4 We have also provided extensions to what
5 we would have published in terms of notice upon
6 request. We have allowed -- we have offset our
7 planning schedules on times to ensure that we get
8 specific input on portions of the planning area where
9 there has been concerns raised by individuals.

10 And, most frequently, the requests do
11 come from tourist operations where many operators are
12 out of the country during part of the planning season,
13 most often involved with sportsman shows and the like.
14 That is very vital to their industry and we make every
15 attempt to accommodate those on a per request basis.

16 MR. EDWARDS: Q. Sir, you will agree
17 with me that the Timber Sales Branch, for example -- or
18 in the example given in the material, took four to six
19 months in which to review the draft timber management
20 plan submitted to it?

21 MR. KENNEDY: A. I believe that's the
22 total time period that all of the reviews are taking
23 place in, yes.

24 Q. All right. And those are people who
25 are trained and skilled in the areas of plan review?

1 THE CHAIRMAN: No, but are you saying all
2 reviews, more than one plan? All plans, or just one
3 plan?

4 MR. KENNEDY: Excuse me. What I was
5 referring to in that case was the three levels of
6 review that are taking place on an individual plan.

7 THE CHAIRMAN: Okay.

8 MR. KENNEDY: But, yes, Mr. Edwards,
9 those individuals are looking at -- they are skilled
10 and they are trained and they are looking at all
11 aspects of the timber management plan, including the
12 forestry details, the timber details, as well as the
13 handling of other use concerns and such items as
14 long-range wood supply.

15 MR. EDWARDS: Q. All right. And you
16 don't think it's unreasonable for them to take that
17 long?

18 MR. KENNEDY: A. I feel that that amount
19 of time period is necessary to provide a thorough
20 review of all aspects of timber management planning.

21 Q. Well, sir --

22 MR. FLEET: A. Mr. Edwards, in that four
23 to six-month plan review and approval process there are
24 two months of that which are devoted to public review
25 and the remainder of the time is a combination of MNR

1 review and author, be that company or Crown, response
2 and revision.

3 So it is not fair to suggest that that
4 four to six months is entirely Timber Sales Branch
5 review. There is a large component of that review and
6 approval time which is devoted to public review and
7 approval of the plan.

8 Q. Yes, I thank you for that, Mr. Fleet.
9 And we, I guess, then just join issue on the
10 reasonableness of the 30 days for the public, and I
11 will move on.

12 MR. KENNEDY: A. I might add before you
13 move on, if I may. Mr. Chairman, I indicated that the
14 time period I was speaking of was for one plan. I am
15 correct in that, but I also should indicate that at
16 both the region, the main office and conceivably at the
17 district there may be more than one plan that is in the
18 review mode and, as such, this would require some
19 scheduling of individuals' time that are looking at all
20 reviews. And that is fairly common from year to year.

21 MR. EDWARDS: Q. Sir, term and condition
22 2 sets out certain information as I recall.

23 MR. KENNEDY: A. Did you say No. 2?

24 Q. Term and condition No. 2 sets out the
25 contents of certain notices and there is a term and

1 condition which indeed sets out some of the documentary
2 information which must produced to the public. And I
3 am not sure without spending a minute - and I won't
4 waste it - which term and condition that is, but with
5 respect to the documentation, sir, I have a question.

6 The comments on the draft plan by other
7 government employees, agencies, other persons in the
8 MNR, other submissions, do those all become part of the
9 public record that is at some stage available?

10 A. Public record, yes.

11 Q. All right. Are those comments in the
12 draft plan review attributed and identifiable; that is
13 to say, are the documents or memoranda which come in
14 attributed to the author or are they non-identified?

15 A. Not in all cases. I am thinking of
16 the joint reviews that are produced, we do not require
17 each individual item to be referenced by a reviewer,
18 no.

19 Q. Sir, I am thinking of a particular
20 example. Just as an example, the Magpie Plan where I
21 understand some comments -- or rather, a letter from a
22 biologist in an adjoining unit was initially put in
23 with the title and the identification and the name of
24 the individual who authored the document, and then some
25 time later only a carbon copy was available with no

1 indication as to who the author was or what that
2 person's expertise was, so as to whether it was written
3 by a biologist or if it was by somebody who had no
4 training, it was just not obvious to a public reviewer.

5 Now, would you agree with me, sir, that
6 it is important to have attributed documentation in the
7 material that is available to the public?

8 A. I am not familiar with the situation
9 that you spoke of. I think it's advisable that the
10 reviewers are mentioned, I would suggest, in a fashion
11 but the review is from each of the various levels of
12 the organization, and I do not think it's necessary to
13 provide a detailed list of which reviewer made which
14 comment. No, I don't think that serves any useful
15 purpose.

16 Q. Well, is there any useful purpose
17 served in removing the person's name from the document?

18 A. Again, I'm not familiar with your --

19 MR. FREIDIN: Are you suggesting that
20 that happened? Are you going to lead evidence to that
21 effect? I mean, you are giving evidence, Mr. Edwards.

22 MR. EDWARDS: Well, I am only using this
23 as an example, Mr. Chairman. I understand that this
24 occurred. I don't know if I intend to lead evidence
25 about it.

1 THE CHAIRMAN: Well, there's no --

2 MR. FREIDIN: Well then, don't suggest to
3 the witness that it did occur, please.

4 THE CHAIRMAN: Okay, Mr. Freidin, just a
5 second. Mr. Freidin, I know you are concerned, but
6 there is other ways to express your concern.

7 There is no evidence before us, Mr.
8 Edwards, that the document had any names removed and,
9 if they were removed, there is no evidence as to who
10 did the removing.

11 MR. EDWARDS: Mr. Chairman, I wasn't
12 trying to suggest anything Machiavellian about this.
13 It may have just happened that a carbon copy -- my
14 information is that a carbon copy came in which was of
15 no help to a member of the public, and I am not
16 suggesting that anybody did anything underhanded.

17 MR. FREIDIN: And I am not suggesting
18 that anybody did anything underhanded either. I think
19 you can ask the questions without leading up to it with
20 a hypothetical -- a situation which is suggesting that
21 it actually occurred.

22 THE CHAIRMAN: Okay. Well, let's get to
23 the question. Do you feel that there is any useful
24 benefit to exhibit the comments that come in in
25 anything other than the form in which they were

1 submitted? Do they have to be edited; can they just go
2 in and appear on the record as they were received?

3 MR. KENNEDY: Yes, I do feel that there
4 is a merit in editing comments and, when I say edit, I
5 am referring to everything from reformatting them into
6 a standard form, so that we have a review that is more
7 readily usable. I think that helps to contribute to
8 reduce the paper flow, some of the discussions we had
9 earlier today about the size of reviews such as on Lac
10 Seul.

11 I think that the Lac Seul review format
12 in the way that it's structured providing a listing of
13 comments from all reviewers, an indication of kind of
14 comments that are there, is a good way of conveying
15 that information both to plan author, planning team and
16 to convey to the public.

17 So I do feel that there is a place for
18 editing of individual review comments.

19 THE CHAIRMAN: Does that preclude the
20 documentation being retrievable by the public in their
21 original form?

22 MR. KENNEDY: When you say 'by the
23 public', I think that access to those files would, I
24 believe, be available.

25 THE CHAIRMAN: In other words, you do a

1 summary to make it more presentable and more perhaps
2 easily understood, you might do a summary of the
3 comments as they came in, but if somebody wanted to go
4 to the source documents prior to the editing, would
5 they be able to? That is question.

6 MR. KENNEDY: Yes, I believe that
7 information would be open, subject to the Freedom of
8 Information Act.

9 MR. FLEET: Mr. Chairman, I concur with
10 what Mr. Kennedy has said with respect to comments
11 received by the public, they would be quite traceable.

12 With respect to the fashion in which we
13 would conduct and the way in which we develop the MNR
14 list of required alterations, which is a three-level
15 review, oftentimes it is done via a mating format of
16 the three reviewers where we will consolidate some
17 comments, and I would suggest that it might be
18 difficult to trace whether a particular MNR comment
19 came from the district, the region or main office.

20 In some cases it comes from all three and
21 one comment would appear, it would be more difficult to
22 trace. The important thing is that the comment or the
23 required alteration is indeed included in that MNR list
24 and, in our view, not so much who provided the comment.

25 THE CHAIRMAN: But what the comment was?

1 MR. FLEET: What the comment was and how
2 that will impact ultimately on the approved plan.

3 MR. EDWARDS: Q. If I could finish off
4 with one question on this area. Is it a problem to
5 ensure that the authors of the statements are
6 identified; that is to say, the statements are
7 attributed?

8 MR. FLEET: A. Which authors?

9 Q. The authors of the statements; that
10 is to say, the comment on the plan which has come in
11 from whatever source, is it a problem with making
12 efforts to ensure that the authors are identified, the
13 statements are attributed to some --

14 A. In terms of public comments or other
15 government agencies?

16 Q. Both.

17 A. They would generally be traceable.
18 We have only the difficulty that we must notify those
19 people that their comments -- under the Freedom of
20 Information Legislation we must give prior notification
21 to those people that their comments become part of the
22 public record.

23 If that hadn't been done, it might be a
24 legal problem that I am not entirely familiar with, but
25 generally it's traceable and we would be able to

1 identify those.

2 Q. Do the notices not usually tell
3 people when they make a submission that it becomes part
4 of the public record?

5 A. They should, yes.

6 Q. That is standardly done; is it?

7 A. It's becoming standard, yes.

8 Q. And with respect to the persons
9 employed by other ministries, is there a problem in
10 ensuring that their statements are attributed to them?

11 MR. McNICOL: A. Mr. Edwards, just a
12 point on that. If the comment is coming in the form of
13 a memorandum, it's common practice for - working as a
14 wildlife biologist - when I wrote a memo I wrote it
15 under my supervisor's signature, fish and wildlife
16 supervisor.

17 Now, the only way that that comment could
18 be keyed back to me would be through initials at the
19 bottom of that memo. The initials did not say JMc,
20 Wildlife Biologist, it's just JMc and, generally, there
21 is a slash and the secretary that typed the memo is
22 there as well.

23 So the way that we generate memorandums
24 and sign those memorandums, I think, precludes your
25 request to a certain extent in that the author of the

1 memo is not necessarily identified, it will go out
2 under a supervisor's signature.

3 Q. Is there any reason that it is not
4 possible to have a supervisor's signature available to
5 the public?

6 A. No, not at all.

7 Q. What I am getting at, sir, is: If a
8 member of the public comes to a public information
9 session, sees a carbon copy with no attribution
10 whatsoever as to who the author is and it happens to
11 contain a lot of information about wildlife biology,
12 would you agree that it would be of some assistance to
13 that member of the public to know whether the author of
14 that document was an expert, a lay member of the
15 public, a member of a sister ministry.

16 Would you not agree that that would be of
17 some assistance to the member of the public in
18 assessing the value of that particular comment?

19 A. Even if the memo was not signed - and
20 I am not suggesting that's not a good idea - but even
21 if it was not signed, the individual who would have
22 signed it would be identified at the bottom of the memo
23 and it would be on, I would assume, Ministry
24 letterhead.

25 So it's obvious that it's coming from

1 Ministry of Natural Resources and the signatory, even
2 if the signature is not there, would be that of the
3 fish and wildlife supervisor or the lands supervisor.

4 Q. Do you then agree, sir, that that
5 type of information ought generally to be included if
6 it's in the original document?

7 A. I am sorry, repeat the question.

8 Q. Do you agree that that information,
9 the author of the document, ought to be included in the
10 document that is available to the public if it's in
11 fact in the original?

12 MR. KENNEDY: A. I believe we have
13 indicated to the Chairman that in cases that that
14 information is available. I am not sure it's necessary
15 to have it available in a summarized form such as those
16 kind of comments that we see in a review such as the
17 one we have included in our minutes with regard to Lac
18 Seul Forest.

19 Q. Fine.

20 MR. EDWARDS: I'm moving, Mr. Freidin.
21 That was my last question.

22 MR. FREIDIN: All right. Mr. Chairman, I
23 am just saying - you can move on - but I think there is
24 a confusion here that we are talking about two
25 different situations now.

1 One is whether in fact you attribute or
2 can attribute or should attribute specific comments
3 coming in through main office, region and district
4 review and somehow have those identified by exactly who
5 it came from at what administrative level. That is one
6 question.

7 I think we are now talking about a little
8 different situation than the one I got up and made my
9 objection about; and, that is, where in fact there is a
10 letter that's actually at the information centre and
11 has a lot of information in it but the signature is not
12 there.

13 I think they are two completely different
14 situations, in my submission, and I just wanted to make
15 that observation.

16 MR. EDWARDS: Well, I am moving on, Mr.
17 Chairman, but the point that is made on behalf of my
18 client is that there should be a term and condition
19 which should see to it that the authors of statements
20 are identified so the members of the public can better
21 inform themselves when they go to one of these public
22 information sessions, and that is the fashion in which
23 we would recommend the modification of this term and
24 condition.

25 MR. FREIDIN: Well, I would like to

1 perhaps be clear on what exactly he's saying. Is he
2 saying that he wants -- I mean, I still am confused as
3 a result of the distinction I see in terms of the
4 questioning.

5 I would like to be clear what it is your
6 client or Mr. Edward's client wants, in fact, if the
7 distinction I've made has any reality to it.

8 MR. EDWARDS: If I can refer to the
9 hypothetical that I gave, and whether it's an actual or
10 a hypothetical it doesn't matter for the purposes of
11 this discussion.

12 MR. FREIDIN: That is where the letter
13 was available at the information centre.

14 MR. EDWARDS: My understanding is that a
15 letter which had the name of a wildlife biologist on it
16 was initially in the file and then at some stage, and
17 for whatever reasons, subsequently the document that
18 was available to the public was only an unattributed
19 carbon copy which didn't identify the author, didn't
20 give a name, didn't give any date - it may have given a
21 date - but it just didn't provide the member of the
22 public with the information that would assist that
23 member of the public judging the value of that
24 document.

25 THE CHAIRMAN: Okay. But the term and

1 condition you are suggesting should be included, if the
2 Board were to agree, would be a term and condition that
3 would require all comments, whether they are from
4 government agencies or the outside lay public, to
5 represent on their face where they came from?

6 MR. EDWARDS: Yes.

7 THE CHAIRMAN: And who authored them?

8 MR. EDWARDS: Exactly.

9 MR. FREIDIN: And is he going so far as
10 to say that the summaries which are used like the one
11 we saw in the Lac Seul Plan should, in fact, be
12 prepared in such a way that you can attribute to each
13 comment the exact person and the exact administrative
14 level of the Ministry from which that comment came?

15 MR. EDWARDS: No, just the author of the
16 summary. I am not saying that if a person is
17 summarizing information which has come in from a number
18 of sources that that person has to attribute every
19 single person that he or she spoke to in the course of
20 making the summary.

21 THE CHAIRMAN: Well, for instance, if it
22 came from the planning committee, if the planning
23 committee was summarizing something, what would you
24 expect it to be attributed to, the chair of the
25 planning committee?

1 MR. EDWARDS: The planning committee,
2 whatever, just so that there is something to identify
3 it, to trace it back. What I am saying is that --

4 THE CHAIRMAN: And it doesn't matter what
5 within the planning committee minutes--

6 MR. EDWARDS: No.

7 THE CHAIRMAN: --in terms of the
8 individual item, was attributed to which member of that
9 planning committee?

10 MR. EDWARDS: Taking this instance that I
11 have given as a complete hypothetical, whether it is or
12 it isn't, the problem that I understand existed was
13 that a person would want to know whether the commentary
14 in this letter came from a person who is knowledgeable
15 in the field of biology or somebody who was not, and it
16 was of great import or could be of great import to know
17 that.

18 MR. FREIDIN: Just so I am clear. For
19 instance, hypothetically if it was Mr. Fleet who
20 prepared the summary or the list of required
21 alterations for the Lac Seul Plan, you would want
22 something to indicate that this document, all of it,
23 was prepared, compiled by Mr. Fleet?

24 MR. EDWARDS: Yes, and any original
25 letters which came in signed by other government

1 agencies or government officials would bear the name of
2 their author as the original did.

3 MR. FREIDIN: That information in terms
4 of letters which are in the district files and are
5 open -- available to the public, subject to Freedom of
6 Information, is it those letters that you are talking
7 about?

8 MR. EDWARDS: Yes. The documents that
9 are available for public review.

10 THE CHAIRMAN: I think that we have it
11 straight, Mr. Freidin. If something is summarized some
12 attribution should be given to the person who did the
13 summarizing.

14 MR. FREIDIN: That I understand.

15 THE CHAIRMAN: Okay. If letters are
16 received from the public at large, then they should be
17 available in the form that they were received.

18 MR. KENNEDY: Mr. Chairman, might I
19 remind you --

20 MR. EDWARDS: If I might add, letters
21 from other government ministries in the form in which
22 they were received.

23 THE CHAIRMAN: As well?

24 MR. EDWARDS: Yes.

25 MR. KENNEDY: Mr. Chairman, might I

1 remind you of our evidence with regards to the content
2 and format of supplementary documentation versus
3 correspondence files and our suggestion that it's
4 appropriate to include a summary of those
5 correspondence files, which would include comments
6 received from the public and, in that regard, we --

7 THE CHAIRMAN: That is in the summaries,
8 but I think you are going beyond that to take a look at
9 the actual letter as well; is that not the case?

10 MR. EDWARDS: Right. Somebody should be
11 able to find out who the author was.

12 MR. KENNEDY: Yes, and I am making --
13 trying also to understand so that I am not hearing -
14 excuse me, I want to be clear on what is being
15 suggested relative to what accompanies a timber
16 management plan - and that the supplementary
17 documentation would contain a summary of correspondence
18 files, in those correspondence files that I would
19 expect to see individual letters that had been
20 submitted by members of public and other agencies.

21 MR. EDWARDS: Q. And in that
22 supplementary documentation, sir, my point - which I
23 thought I was leaving ten minutes ago - is that the
24 originals ought to be there, or the authors ought to be
25 attributed in that supplementary documentation.

1 Do you see my problem with that?

2 MR. KENNEDY: A. No, I do not.

3 Q. Moving on, sir, to a third area under
4 I guess the public consultation, really it has to do
5 with mapping and what is available to the public.

6 Mr. Kennedy, I guess if anybody qualifies
7 as a mapping expert on the panel; would it be you, sir?

8 A. I would certainly undertake to answer
9 your questions in that regard.

10 Q. I'm glad. Don't hide your candle
11 under a bushel, sir.

12 THE CHAIRMAN: Mr. Fleet appears to be
13 nominating you, Mr. Kennedy.

14 MR. KENNEDY: Thank you for that vote of
15 confidence, Mr. Fleet.

16 MR. EDWARDS: Sir, the question that I
17 have has to do with a term and condition which my
18 client may wish to see included in any order that the
19 Board may make, and it would have to do with the
20 identification and location of tertiary roads which we
21 have discussed at some length, and I hope we won't go
22 on too much longer in this panel.

23 Q. I have for you, sir, a document dated
24 June 3rd, 1987. I understand, or I am led to believe
25 this came from the Big Pic Plan which is in the reading

1 room and, in any event, I think it's self-explanatory
2 on its face, and I will just distribute a copy to
3 counsel and yourself and the Board, if I might.

4 MR. EDWARDS: (handed)

5 THE CHAIRMAN: Exhibit 896.

6 ---EXHIBIT NO. 896: Copy of letter from Big Pic Plan
7 dated June 3, 1987.

8 MR. EDWARDS: Q. The very simple point,
9 Mr. Kennedy, that I intend to make about this is that
10 it's --

11 MR. KENNEDY: A. Can I have a few
12 moments, please, to read this.

13 Q. Oh, sure.

14 A. This is the first time I have seen
15 this particular letter.

16 Q. Okay. If I could just suggest to
17 you, sir, what I'm looking for. As I understand, this
18 is a letter to Mr. Strasberger who is the district
19 manager and correspondence from Mr. Frei who works or
20 686860 Ontario Limited, and the simple point that I'm
21 making is that he has drawn a tertiary road on his map
22 and the same thing occurs at page 497 of the witness
23 statement.

24 And I'm going to be asking you questions
25 about that particular issue. So take your time to read

1 the document, if you care, sir.

2 A. I would like a few moments. Did you
3 say page 497?

4 Q. Page 497 of Exhibit 813A which is the
5 Volume I of the statement of evidence for Panel 15.

6 A. Mr. Edwards, could I ask: Is there a
7 an extra copy in the room? We have one other panel
8 member that would like to have a --

9 Q. Oh, certainly. I have got one extra
10 here.

11 A. Could I ask you to direct that to Mr.
12 Davison.

13 Q. (handed)

14 A. And advise you that I am not familiar
15 with the details of this situation, but I am quite
16 prepared to answer questions in regard to mapping.

17 Q. Sir, the question I have just relates
18 to the ability of somebody to draw in a general fashion
19 the location of a tertiary road on a map.

20 I understand that -- or my recollection
21 is that in the reading room there is a map of Doucett
22 Township in the Wawa District as well which also has
23 some tertiary roads on it. Do you recall having ever
24 seen that?

25 A. It doesn't come to mind. Do you know

1 which panel that was filed with?

2 Q. I can't even recall. But the point
3 I am making, sir, is: How difficult is it to draw a
4 tertiary road on a map?

5 A. Given that you determine the location
6 of the tertiary road, it's not difficult to transfer
7 that location from field reconnaissance into a map
8 form.

9 Q. In advance, sir, in a general
10 fashion, is it difficult to draw the general location
11 of a tertiary road on a map?

12 A. Again, it would depend on the timing
13 that you were setting out to identify that road
14 location and the information that you had available to
15 you. It could range from being quite an easy task to
16 something that is very difficult.

17 I believe we gave evidence last week with
18 regard to the kind of information that you would have
19 to have available to you in order to determine the
20 location of a tertiary road.

21 Q. So at least you would agree that it
22 is not impossible in all circumstances?

23 A. I would agree that it is not
24 impossible in all circumstances. I would indicate that
25 the longer that you are away from when the road is to

1 be built, that the more difficulty that you would have
2 or uncertainty in the conditions that would be
3 encountered.

4 Q. And at the very least, the author of
5 the map at page 497 and Mr. Frei this chief forester
6 for 686860 Ontario Limited seemed to be able to do it?

7 A. Yes, and the reason I would suggest
8 that he was able to do it is that they are talking of a
9 road that is intimately or --

10 MR. FREIDIN: Sorry?

11 MR. KENNEDY: Imminently to be built and
12 that they have the knowledge of what the machinery is
13 that they are going to use in that area, what kind of
14 harvesting machinery, they have got knowledge of the
15 stand conditions, and I see from at least one reference
16 that there is a reconnaissance survey that has been
17 undertaken to determine the kind of soil conditions,
18 ground conditions they are encountering, the kind of
19 density of trees, the kind of road construction
20 equipment available to them.

21 So they are in a position to have, I
22 would suggest, all of the facts at their disposal and
23 and the time of construction is, I would assume, months
24 away from, if not weeks away from when they intend to
25 begin. So from a full knowledge base, yes, it's

1 possible to map what would be a desirable road
2 location.

3 MR. EDWARDS: Yes, thank you for that,
4 sir.

5 And the point that I am making, Mr.
6 Chairman, is that from my client's point of view, that
7 a reasonable term and condition would include some
8 requirement for the general location of tertiary roads
9 and that is where we join issue on the Ministry with
10 respect to its terms and conditions, and I will move on
11 from that point.

12 MR. KENNEDY: Mr. Edwards, before you
13 leave that. Are you suggesting a time frame in which
14 that could be done?

15 As I have indicated it is extremely to
16 difficult to do that without having that information
17 base available to you and that information is not
18 available very far in advance of the operations.

19 MR. EDWARDS: Q. Well, I don't have the
20 draft term and condition that we are suggesting with me
21 today, but it will be submitted in due course and you
22 will hear about it shortly.

23 MR. KENNEDY: A. And I am providing you
24 with some advice and caution in terms of the
25 feasibility of such a term and condition. You would be

1 wise to consider the time frame.

2 Q. Well, I certainly will take your
3 counsel under advisement, Mr. Kennedy, and thank you
4 for that.

5 THE CHAIRMAN: Charge him for it, Mr.
6 Kennedy.

7 MR. EDWARDS: I can't afford him, Mr.
8 Chairman.

9 MR. EDWARDS: Sir, I wish to address the
10 issue of a term and condition which would better ensure
11 that the provincial review addresses non-timber values.

12 Q. And, Mr. Fleet, I believe you were
13 the author or at least attributed as the author of
14 paragraph 24 of the summary of statement of evidence.
15 It's at page 93 of Exhibit 813A. Do you have that,
16 sir?

17 And you will agree that the main office
18 review focuses on issues which extend beyond management
19 unit boundaries and which may involve a time period
20 extending beyond the current TMP period, and which
21 evaluate the development of the forest on a provincial
22 scale?

23 MR. FLEET: A. Yes, I would agree with
24 that.

25 Q. And, sir, you would also agree with

1 your statement, which I assume is your statement at
2 page 233 of that same witness statement, the second
3 full paragraph.

4 MR. FLEET: A. Would that be...?

5 Q. "The main office review..."

6 A. First paragraph after point 4, after
7 the title?

8 Q. No, the second paragraph there:

9 "The main office review deals primarily
10 with the management of the timber
11 resource because the multi-disciplinary
12 review of the plan is effectively
13 conducted at the regional and district
14 levels. The major focus of timber
15 management plan review by main office
16 involves aspects which are provincial in
17 nature such as wood supply and wood
18 disposition."

19 Do you agree with that statement, sir?

20 A. Yes, I do.

21 Q. Yes. And you are the author of that
22 statement; are you?

23 A. I am a joint author.

24 Q. I see. You will take credit for it.

25 A. I will claim some ownership of it,

1 yes.

2 Q. Yes, thank you. The main office
3 review is prepared by the Timber Sales Branch?

4 A. That was the name of the branch when
5 this was written. I believe it is now called Forest
6 Products and Marketing, but I am not sure, and for the
7 intents of -- for the purpose of this, it could be
8 described still as Timber Sales Branch, that is what
9 those in the field understand.

10 Q. Forest Products and Marketing would
11 still involve, one assumes, the sale of timber?

12 A. Yes, it would.

13 Q. All right. Would you agree with me,
14 sir, that the non-timber values from a provincial
15 perspective are de-emphasized by the structure of the
16 review which is proposed?

17 A. I don't think I would agree with
18 that. I think I would suggest that this is the review
19 of a timber management plan and, as such, because of
20 both the provincial nature and very long-term nature of
21 timber supply, that that is emphasized during this
22 review process.

23 Q. The main office review is not
24 multi-disciplinary but the focus is on long-term wood
25 supply?

1 A. That is right.

2 Q. Do you agree with that?

3 A. Yes.

4 Q. From the point of view of the
5 provincial perspective on non-timber values, sir, what
6 protection if any exists at the provincial level to
7 ensure --

8 THE CHAIRMAN: Mr. Edwards, I thought we
9 covered this yesterday with Ms. Swenarchuk to the
10 extent that the various guidelines, such as the tourist
11 guidelines, the moose guidelines, et cetera, which have
12 to be followed in the preparation of the plans really
13 cast the provincial perspective upon non-timber values.

14 Is that not the gist of your evidence,
15 Mr. McNicol? I think it was.

16 MR. McNICOL: It was, Mr. Chairman.

17 MR. EDWARDS: I don't believe I was here
18 for the entire day yesterday, Mr. Chairman. If this
19 has been dealt with --

20 THE CHAIRMAN: Okay. Maybe you could
21 just repeat that one answer and that--

22 MR. EDWARDS: I apologize.

23 THE CHAIRMAN: --will give you some
24 assistance, I think.

25 MR. McNICHOL: I believe you were here

1 this morning, Mr. Edwards, when we --

2 MR. EDWARDS: Yes, I was.

3 MR. McNICOL: I think the thrust of the
4 evidence or my answer yesterday and this morning was
5 that the guidelines for other disciplines - and we
6 include in there the provincially approved guidelines
7 for tourism, fisheries, moose - in essence, capture the
8 objectives, policies for those respective disciplines,
9 and the implementation of those guidelines at the
10 district level through timber management planning --
11 successful implementation of those guidelines allow for
12 the achievement of policy and objectives set by other
13 branches of the Ministry.

14 MR. EDWARDS: Q. Is that on a regional
15 basis or how is that done across management units?

16 MR. McNICOL: A. Okay. The district,
17 obviously responsible for a relatively small area; the
18 regional review which is a multi-disciplinary review
19 looks at the larger picture, if you will, the regional
20 picture and, more specifically, looks at consistency
21 with regard to the approach and rationale for
22 application of the guidelines.

23 They would also be responsible for
24 looking at issues that crossed regional boundaries or
25 district boundaries, much of which should have been

1 dealt with during the actual construction of the timber
2 management plan.

3 MR. EDWARDS: Before I move to the next
4 term or condition on which we would join issue with the
5 Ministry, I do have specific questions which arise out
6 of the area of concern for the Minaki Crown Management
7 Unit which is set out at page 497. That is the one
8 with the tertiary road example.

9 Q. Could the panel identify who is
10 responsible for the insertion of this material in the
11 witness statement?

12 MR. FLEET: A. (indicating)

13 Q. Mr. Fleet. Sir, now I assume you
14 were not part of the -- or were you part of the team
15 that authored the area of concern planning records
16 here?

17 A. No, I was not.

18 Q. All right. What is the purpose of
19 having these in the document, sir?

20 A. The purpose is to provide the hearing
21 with examples of a major amendment, a minor amendment,
22 and an administrative amendment.

23 Q. I see. Have you informed yourself of
24 the -- when you chose this example, did you inform
25 yourself about the circumstances which gave rise to it?

1 A. Not thoroughly, no.

2 Q. Did you speak with the authors of
3 these documents?

4 A. I personally did not.

5 Q. You did not. Now, sir, perhaps just
6 in a general fashion then, I have some concerns about
7 the way the area of concern process seems to have
8 operated in this circumstance and maybe you can assist
9 us because I think it would illustrate the way it may
10 operate in a more general fashion.

11 Page 497, the map, notwithstanding the
12 existence of areas of concern, would appear to show
13 cutting to the shoreline of the lake which is
14 immediately above area of concern No. 1; is that fair?

15 A. It appears to show cutting to the
16 shoreline of the warm water lake immediately -- it
17 would be immediately west of the area of concern on the
18 south shore of that lake. Is that the specific point
19 you are referring to?

20 Q. Sir, I am looking at area of concern
21 No. 1.

22 A. Yes.

23 Q. Is that immediately below a lake?

24 A. Immediately south of the lake, yes.

25 Q. Yes, immediately south of a lake.

1 And would it appear to allow cutting to the shoreline
2 along portions of that shore?

3 A. Yes, that is how it appears to me,
4 sir.

5 Q. Yes. And that area of concern -
6 identifying the lake area of concern No. 1 - if one
7 turns to page 499, one sees as an identified value a
8 warm water lake with potential fish species and moose,
9 the applicable guidelines being fish habitat and moose
10 habitat.

11 And I just draw to your attention that
12 this lake would appear to be quite near - although it's
13 difficult to tell from the scale of this map - it would
14 appear to be quite near to Bill Kozak's outpost camp
15 which is on an adjoining lake.

16 A. That would be approximately a mile
17 distant.

18 Q. A mile distant. So in this area of
19 concern, sir, what is your understanding of the
20 consideration given to the tourism guidelines, if any,
21 with respect to that lake?

22 A. I can't give you the specific answer
23 except to say that it's my understanding that Mr. Kozak
24 was notified during the major amendment process of our
25 intentions. He would have been fully --

1 Q. I am particularly interested in the
2 use of the term 'potential fish species' at page 499.
3 Now, when one says 'potential fish species', does that
4 mean potential in the sense that one thinks fish are
5 there, or one thinks that fish which may have some
6 exploitable value are there?

7 A. I am speculating, but given it is a
8 warm water lake, I suggest perhaps that potential fish
9 species would be those associated with warm water lakes
10 in that particular part of the country.

11 Q. Walleye and pike?

12 A. I am speculating in terms of what
13 that means.

14 Q. Sir --

15 MR. KENNEDY: A. Mr. Edwards, are you
16 aware of the comments made by Mr. Kozak in regard to
17 that particular amendment?

18 Q. I have looked at them, but I just
19 want to ask my questions on how - and I'll ask this to
20 Mr. Fleet or Mr. Kennedy, if you can help out on this -
21 that if the fish guidelines were considered -- the fish
22 habitat guidelines were considered, how did cutting to
23 the shoreline become a prescription.

24 MR. FLEET: A. It's my understanding,
25 sir, that with respect to the fisheries guidelines and

1 warm water lakes that you can, with specific
2 information available to you, cut to the shoreline
3 based on consideration of slope and based on a certain
4 amount of information I think that is required to do
5 that.

6 Mr. McNicol might be able to, in fact,
7 confirm that, but that is my understanding, sir.

8 Q. Well, this would appear to indicate
9 zone -- on page 499, it would appear that one has a
10 zone 4, cut to shore, flat terrain, no fishery
11 concerns.

12 A. Yes.

13 Q. And that would appear that that was
14 part of the option which was identified and adopted?

15 A. To me what that means is that with
16 flat terrain there is virtually no slope, therefore,
17 there would be no risk of erosion and, therefore,
18 cutting to the shoreline would not impact on the warm
19 water fishery.

20 And I think that that is the permissible
21 prescription in the fisheries and water quality
22 guidelines on the warm water lake.

23 Q. But, in this particular case, this
24 was not identified as a lake with any potential for
25 tourism unlike, as you can see, the subsequent lake

1 which had Mr. Kozak's outpost camp. That is at page
2 498 -- pardon me, 500.

3 A. Based on the documentation I have
4 before me, I don't think that it was, although I would
5 indicate that, again as Mr. Kennedy pointed out, Mr.
6 Kozak who was evidently the closest tourist operator in
7 the vicinity of this particular proposed operation was
8 contacted.

9 It indicates here that he did attend the
10 information centre and had no problems with the
11 proposals. And it would seem to me that if he were
12 there he too would have seen the proposals for
13 harvesting to the shoreline on that particular lake.

14 Q. I see. If I could move on from this
15 point to a more general line which relates to a term
16 and condition that my clients will --

17 MR. FREIDIN: I am just wondering --
18 sorry, for interrupting, Mr. Chairman.

19 MR. EDWARDS: If I can move on, sir, to a
20 more general proposition which deals with a term and
21 condition which my clients will wish to have imposed by
22 the Board, should it see fit, and that has to do with
23 protection of potential tourism resources.

24 We would be seeking and will identify
25 much more specifically than I do today a term and

1 condition which better identifies and protects a
2 non-timber value such as tourism in particular
3 potential tourism areas.

4 Q. Now, sir, can you tell me: Does the
5 area of concern planning process provide for the
6 identification of potential tourism values? Can you
7 answer that yes or no?

8 MR. FLEET: A. Yes.

9 Q. It does?

10 A. I would say, yes, in consideration of
11 the direction provided in the District Land Use
12 Guidelines and associated possible other inventories
13 and participation of the relevant member on the
14 planning team representing that discipline, absolutely,
15 yes.

16 Q. All right. Could I ask you, sir, to
17 confirm, to give it some thought, and you're
18 unequivocally saying: Yes, it does provide in certain
19 circumstances for the protection of potential tourism
20 values?

21 A. I will give you an example, sir, in
22 the Timmins District.

23 Q. Well, before you do that, could
24 you -- I just want you to be very clear on that point.
25 You are absolutely certain of the yes answer that you

1 gave me, you have no doubt on this topic?

2 MR. KENNEDY: A. Mr. Edwards, I would
3 like to collaborate Mr. Fleet's comment and also direct
4 you to page 214 of Exhibit 813A.

5 Q. Yes, I was going to come to that
6 shortly. But, Mr. Kennedy, is your answer yes as well,
7 sir, that potential tourism values can be protected by
8 the area of concern planning process?

9 A. Yes.

10 Q. There is no doubt in your mind about
11 that, sir? You are unequivocally certain of that; are
12 you?

13 A. Providing that they are identified,
14 yes.

15 Q. Thank you. Just to take this one
16 slight step further. It is then not necessary to have
17 a potential resource identified in a DLUG, the District
18 Land Use Guidelines, before the area of concern
19 planning process can protect potential tourism
20 resources?

21 A. We do not limit the identification of
22 values to those that showed up in the DLUG, if that is
23 your question.

24 Q. That is my question. So even if it
25 is not identified and named in DLUG, a potential

1 tourism resource can be protected by this process?

2 A. As we have indicated, that any value,
3 feature, or land uses/users or items that could be
4 identified on a values map and, as such, be considered
5 through the area of concern planning process.

6 Q. Thank you. Now, sir, you were kind
7 enough to mention page 214 of the witness statement
8 which is something that I was going to refer you to.

9 MR. EDWARDS: And does the Board have
10 that?

11 Q. And I think the point you were going
12 to make, Mr. Kennedy, obviously is that at that page
13 this document refers to resource uses, values including
14 tourism establishments and high potential areas; is
15 that the point you were going to make, sir?

16 MR. KENNEDY: A. Yes, I thought I would
17 allow you to take us to that.

18 Q. Thank you. Sir, what's the author of
19 this --

20 THE CHAIRMAN: It's what you call a
21 guided tour, Mr. Edwards.

22 MR. EDWARDS: Well, we have got a few
23 more landmarks along the way, Mr. Chairman, on this
24 particular topic, but this is a good starting point.

25 It's page 214, Mr. Freidin.

1 MR. FREIDIN: I was just thinking that
2 you've won the tabbing contest.

3 MR. EDWARDS: I have.

4 MR. CASSIDY: What did we ever do
5 before...

6 MR. EDWARDS: Should invest in this
7 company that makes these things.

8 ---Discussion off the record

9 MR. EDWARDS: Q. Sir, at page 214 --
10 really the document is from page 213 to 215, and it's
11 sort of floating in the witness panel. Can you tell me
12 what it is, where does this come from?

13 MR. KENNEDY: A. Yes. I believe we
14 addressed that in direct evidence. It's origin is --
15 first of all, it's a duplicate of a part of Exhibit 5A
16 and we have included it in the statement of evidence
17 for convenience purposes. So you should be aware of
18 that at the outset.

19 Exhibit 5A is an additional documentation
20 which outlines Ministry of Natural Resources response
21 to the government review and this is contained in
22 Exhibit 5A.

23 The origin of this particular document is
24 as a result of discussions between Ministry of Natural
25 Resources and Ministry of the Environment as a result

1 of the government review and an urging on their part to
2 identify the kind of features, land uses and values
3 that would be considered in the preparation of a values
4 map; and, as such, we prepared this listing which is a
5 list of the common kinds of values, et cetera, that are
6 found in an area, and with caution that the list is
7 continually updated and nor is it intended to be all
8 inclusive.

9 Q. Now, sir, turning then if you would,
10 please, to term and condition 6 which the Ministry of
11 Natural Resources has proposed in Exhibit 700.

12 A. Yes.

13 Q. Do you have that with you, Mr.
14 Kennedy?

15 A. Yes, I do.

16 Q. Sir, this is the term and condition
17 which deals with the values map which requires the
18 production of such a map identifying certain natural
19 resource features. Is the values map part of the area
20 of concern process?

21 A. I would suggest that it is not part
22 of the area of concern process although I, myself,
23 think that it is a preliminary step, if you will, to
24 the area of concern process.

25 Q. Yes. I am directing your attention

1 in particular, sir, to 6 sub(b).

2 A. Yes.

3 Q. Which requires the Ministry to
4 normally include the following:

5 "Where such values have been identified
6 by MNR or by any other person in the map,
7 that would include land/resource uses and
8 values (e.g., tourism establishments,
9 mineral aggregates, quarry
10 developments...) et cetera.

11 Now, sir, it says -- in that example,
12 given it says 'tourism establishments', and by that I
13 take it to mean existing buildings or existing
14 establishments, could we take it from your previous
15 answers that term and condition 6 does not eliminate
16 the inclusion of potential tourism resources?

17 A. Most certainly.

18 Q. So the example could just as easily
19 have been tourism establishments and potential tourism
20 areas?

21 A. Yes. If I could, the term and
22 condition No. 6, you will see that the format of that
23 term and condition very closely parallels the headings
24 that are shown on pages 213 to 215 in the witness
25 statement.

1 And simply we have shown a number of
2 examples from each one of the headings to provide some
3 additional illustration of the kinds of features or
4 uses that are being addressed under each one of those
5 headings and, as such, we have chosen a number of
6 examples. There could have been different examples
7 used.

8 Q. Now, sir, behind you is Exhibit 301
9 which is I believe the values map from the Timmins --

10 A. That's correct.

11 Q. --Forest.

12 A. The title on that particular Exhibit
13 301 is Timmins Forest Areas of Concern Map. We have
14 duplicated the legend of that in the statement of
15 evidence on page 216 and, as such, we have indicated
16 that it is a representation of a values map; it is not
17 correctly titled as an area of concern map.

18 Q. So the document which is included at
19 page 216 suggesting that that is an area of concern
20 map, that's a misnomer?

21 A. It's a map that was prepared I
22 believe just prior to the concept of values map and we
23 have indicated that in our direct evidence, that it
24 provides a good example of the kind of information that
25 we expect to be portrayed on a values map.

1 Q. Yes. Well, sir, would you agree with
2 me that the Timmins map which is Exhibit 301 does not
3 contain any reference to potential tourism resources?

4 A. Yes, I would.

5 Q. It does, in fact, appear to contain
6 reference to potential cottaging resources?

7 A. Yes, it does.

8 Q. So clearly the map authors addressed
9 themselves to potential -- the issue of potential
10 resource, but not to the issue of potential tourism
11 resource?

12 A. I believe the plan authors have
13 recorded in the values map form that information that
14 was known to them at the time, which included potential
15 cottaging lot developments from information contained
16 in lake plans, and I would surmise that they do not
17 have information as to potential tourism developments.

18 I understand that that is something that
19 is not likely to occur in the district.

20 Q. Would you agree with me, sir, that it
21 is entirely appropriate to include in an area of
22 concern -- pardon me, a values map, potential tourism
23 resources in future such maps?

24 A. Where they are known and identified,
25 yes, I would suggest that it's something that could be

1 added to a values map as we have indicated.

2 I would suggest also that there may be
3 some difficulty in arriving at identification of high
4 potential areas, in that Ministry of Natural Resources
5 staff would be looking to other sources of information
6 other than our own files to obtain information such as
7 that, as well as archaeological resources which is also
8 listed as a type of land use, values or features that
9 could be shown on a values map.

10 Q. But, surely, that is just an
11 information problem, it's not a philosophical problem.
12 You do agree that potential resources should be
13 identified?

14 A. Absolutely.

15 Q. That is the purpose of the map?

16 A. Yes.

17 MR. FLEET: A. Mr. Edwards, I was hoping
18 earlier to give you an example of identification of
19 potential tourism areas and I was going to suggest that
20 in the Timmins District we have a fairly good handle on
21 potential remote tourism lakes that are remaining.
22 There are not too many of them left.

23 And, although I am not positive, I would
24 suggest with respect to this particular values map for
25 this Timmins Forest, which is approximately a quarter

1 of the district, there possibly are no remote tourism
2 potential lakes left. There are some cottaging lakes
3 left there and they are identified.

4 With respect to, for example, cottaging
5 lakes that we are trying to develop now in the
6 district, we are down to lakes that are only one metre
7 in depth and I wouldn't want a cottage on that
8 particular type of lake. With respect to the
9 development of remote tourism, I would suggest that
10 perhaps those one metre in depth lakes are, you know,
11 less suitable.

12 We do, I think, have - and I may be
13 wrong - but I think we have four candidate or potential
14 remote tourism lakes left in that particular district
15 that would have any measure of suitability. I suggest
16 that they are probably all within the Romeo/Mallette
17 Forest which is the majority of that particular
18 district.

19 Q. But nobody has any problem with the
20 idea that potential tourism should be indicated on the
21 map, if appropriate?

22 A. I certainly do not.

23 Q. All right. Sir, if you could turn to
24 page 92 of Exhibit 814 which is the Red Lake Crown
25 Management Unit Timber Management Plan excerpts.

1 MR. EDWARDS: Mr. Chairman, I think I
2 will be about five minutes in this area, and then I was
3 going to suggest it would be appropriate to have a
4 break.

5 THE CHAIRMAN: Very well.

6 MR. EDWARDS: I'm sorry, page 92 of
7 Exhibit 814. And I'm going to ask this question really
8 of Mr. -- I believe it's Mr. Multamaki who gave
9 evidence with respect to this at page 23235 of Volume
10 137.

11 Q. Mr. Multamaki, if I may just quote to
12 you a paragraph of a rather lengthy answer, sir, and I
13 believe in it you were referring to table -- or
14 paragraph 7.1.2.1, Preliminary Identification of Areas
15 of Concern, Tourism.

16 And do you recall giving this portion of
17 your answer as follows, sir:

18 "Really what we are dealing with there
19 is identifying as preliminary areas of
20 concern under component A those lakes
21 with lodges, under component B those
22 lakes that have outpost camps, and under
23 C those waterbodies that are either canoe
24 routes or travel routes. And really what
25 we are indicating here, we indicated in

1 the Red Lake Crown Plan, were areas of
2 high value tourism in the form of lodges,
3 outpost camps and travel routes."

4 Do you recall giving evidence to that
5 effect, sir? I believe I have quoted you accurately.

6 MR. MULTAMAKI: A. Yes, I do now
7 remember it being long-winded, but I do remember that.

8 Q. I may not speak as quickly as Mr.
9 Multamaki. Sir, where in the Preliminary
10 Identification of Areas of Concern, Tourism is there
11 concern for the issue of potential tourism resources in
12 this AOC process in the Red Lake Crown Management Unit?

13 A. Again, when you look at the Red Lake
14 Crown Management Unit there were, to the best of my
15 recollection, no potential tourism opportunities
16 identified.

17 All of the major waterbodies in the Red
18 Lake Crown contain some form of tourism establishment,
19 a number of -- I mean, that is a combination of fly-in
20 lodges and outposts, boat-in main base lodges, and road
21 access main base lodges. So I think the issue just
22 never came up.

23 MR. GROVES: A. If I can add to that.
24 We are also in the preparation of preparing the values
25 map for the next Red Lake Crown Plan and that we have

1 not found any potential lakes within the unit. The
2 only potential areas for potential tourism expansion
3 are beyond the area of the undertaking.

4 Q. So just so I can have it entirely
5 clear, it was not your intention to exclude potential
6 tourism.

7 MR. MULTAMAKI: A. Had we known there
8 was potential tourism for one of these situations A, B
9 or C, we would have identified it, I think.

10 Q. When you are doing the area of
11 concern planning process and somebody such as a tourist
12 outfitter comes to you and says: Sir, this is a lake
13 which I would like to operate on, perhaps to fly people
14 into because it has a fishery which may be of some
15 touristic value, does that automatically mean that that
16 lake goes on the area of concern -- pardon me the
17 values map?

18 A. I think maybe Mr. Groves is better
19 able to handle that with respect to what is taking
20 place on the Red Lake Crown right now.

21 Q. All right. Mr. Groves, could you
22 address it in that specific instance, sir?

23 MR. GROVES: A. Okay. We have received
24 input from tourist outfitters recently with regard to
25 potential lakes and those lakes are evaluated by MNR

1 staff with regard to type of establishment or, first of
2 all, if a potential establishment and the type of
3 establishment that can be put on that lake.

4 Q. All right. They are evaluated, but
5 does the active -- a member of the public drawing it to
6 your attention put it on a values map, or do you have
7 to make some further decision?

8 A. I would say we would look at it
9 further, but we definitely consider right off the bat
10 that it has potential.

11 Q. All right. Well, if you consider
12 that it has potential then, would you put it on the map
13 automatically, or do you reject submissions by members
14 of the public, I guess is what I am saying?

15 A. No, we don't reject submissions.

16 MR. FLEET: A. There are instances, sir,
17 where it could be rejected if there were other plans
18 for that lake and if, for example, in one of our few
19 remaining lakes in Timmins District somebody came in
20 and suggested that one of - and one of those lakes had
21 a plan for but no actions yet with respect to a cottage
22 development, and that is in fact what is going on right
23 now - we may reject that value as a potential tourism
24 value or lake because we have, through some other
25 planning process, identified that particular lake not

1 as a potential tourism lake but as a cottage
2 development lake in response to a heavy demand for
3 cottages in that vicinity.

4 And, in that instance, I would suggest
5 that indeed it may be rejected because of another
6 planning process. It would still be afforded
7 protection, given that it would be developed as a
8 cottaging lake.

9 Q. So a simple request does not convert
10 this into a value which goes on the values map?

11 A. Not automatically I would suggest,
12 no. And by the example that I just gave you, if we had
13 a lake planned for cottage development and a tourism
14 outfitter wanted to identify it as a potential tourism
15 lake, if there was a plan process in place, in all
16 probability that would be in accordance with the DLUG,
17 that particular plan for that lake would preclude
18 identifying that lake as a tourism lake.

19 MR. KENNEDY: A. As well, Mr. Edwards,
20 we in our direct evidence made reference to information
21 being verified. We do like to see that the information
22 on our values map is accurate and we have given thought
23 to having a verification of any new information that
24 comes forward to ensure that when we add information to
25 the values map that, indeed, it represents the correct

1 situation that is existing there on the ground.

2 MR. EDWARDS: Mr. Chairman, this would be
3 an appropriate time to break.

4 THE CHAIRMAN: Okay. 20 minutes.

5 Thank you.

6 ---Recess taken at 3:40 p.m.

7 ---On resuming at 4:05 p.m.

8 THE CHAIRMAN: Thank you. Be seated,
9 please.

10 MR. EDWARDS: Mr. Chairman, I next wish
11 to address a term and condition which my client will
12 propose respecting perhaps a better definition of the
13 term reserve and more mandatory standards with respect
14 to reserves.

15 I don't have the draft condition
16 obviously with me today, but I think it responds in
17 part to draft term and condition 13 as proposed by the
18 Ministry. And I will ask the panel -- perhaps I will
19 address this question to Mr. Kennedy.

20 Q. Mr. Kennedy, does the Timber
21 Management Planning Manual, or would you agree with me
22 that the Timber Management Planning Manual glossary
23 does not define the term reserve?

24 If you turn to page 173 and 174 you can
25 look at the alphabetical glossary.

1 MR. KENNEDY: A. Yes, I would agree that
2 the Timber Management Planning Manual does not contain
3 the word reserve in the listing in the glossary.

4 Q. In the glossary. Now, sir, at page
5 146 of the --

6 A. Exhibit 4?

7 Q. Of Exhibit 4 -- Exhibit 25, the
8 smaller copy of the Class Environmental Assessment
9 Document.

10 MR. FREIDIN: What page?

11 MR. EDWARDS: Sorry, it's at page 146 and
12 really 147.

13 Q. If one commences reading at the first
14 full paragraph at the top of 147 -- do you have that,
15 sir?

16 MR. KENNEDY: A. Yes, I do.

17 Q. "That comprehensive planning process
18 initially requires that the following
19 question must be answered: Can timber
20 management operations be carried out
21 while protecting the other identified
22 resource features, land uses or values.
23 If the answer to that question is no, the
24 area of concern or a part thereof will
25 normally become a "reserve" in which no

1 timber management operations will be
2 permitted."

3 Now, can I ask you, sir, whether that
4 definition or that use of the phrase there 'reserve' or
5 the word 'reserve', is it defining itself; that is to
6 say, is a reserve a place where no timber management
7 operations will be permitted, or is it describing that
8 particular reserve which might arise in these
9 circumstances?

10 MR. BISSCHOP: A. If I could deal with
11 that question, Mr. Edwards

12 Q. Thank you, Mr. Bisschop.

13 A. In the direct evidence that I gave,
14 with the exception of one operation which may be
15 protection operations, the term reserve is defined as
16 stated there, an area in which no timber operations
17 would be permitted.

18 It's possible that we may carry out
19 protection operations as determined through the annual
20 planning requirements for protection because we may
21 wish to protect the trees that are left in that reserve
22 because, obviously, we want to have the reserve to
23 maintain the trees. So we may need to carry out
24 protection operations and those would be the only
25 operations that would occur in such areas.

1 Q. Sir, if you turn to Exhibit 813A at
2 page 173, which is the planning procedure for areas of
3 concern, I believe it was an overhead, and it may
4 indeed have been introduced as a separate exhibit. Do
5 you have that, sir?

6 A. Yes, I do.

7 Q. And you will see there that this
8 question is dealt with graphically and indicates on the
9 left-hand side reserve, that is to say, no operations.

10 A. Just to qualify the figure. Perhaps,
11 I don't recall whether you were here on the day that I
12 gave the direct evidence, I indicated that the figure
13 was reduced to try to, on one page, simplify the
14 explanation of the area of concern planning process
15 and, in doing that, some of the detail obviously is not
16 there.

17 I think in the -- referring to page 147
18 again, the statement in terms of the answer to the
19 question being no, the key operative word in that
20 statement is normally, in the sense that there will be
21 situations where, for example, we may have to traverse
22 an area of concern with a road.

23 And I indicated in the direct evidence
24 that in those instances we would plan the detailed
25 location of the road with whatever conditions might be

1 involved to ensure prevention, minimization or
2 mitigation of effects.

3 I indicated as well the item I mentioned
4 earlier about protection operations, and I also
5 indicated that there may be situations where operations
6 will proceed, but in those situations, justification of
7 those operations would be required as outlined on the
8 top of page 148, the last sentence of the first
9 paragraph which reads:

10 "In such situations, justification for
11 decisions to proceed with operations must
12 be produced."

13 And the question of how they can proceed,
14 that is the second question that must be answered. So
15 we provided some further detail on the explanation of
16 the figure in our direct evidence.

17 Q. Sir, does a reserve contemplate
18 construction of access; is that a timber management
19 operation?

20 A. Not a reserve and -- access is a
21 timber management operation, yes. We look at an area
22 of concern and we make the determination about
23 operations proceeding. There may be situations where
24 we have to traverse that area of concern with a road,
25 we would then plan it accordingly.

1 Assuming that there is no road
2 requirement and we can ensure total protection, we
3 would call the area a reserve in which no timber
4 management operations, with the exception of possibly
5 protection operations at some time in the future, would
6 take place.

7 THE CHAIRMAN: Meaning a road would not
8 traverse a reserve under that definition?

9 MR. BISSCHOP: Exactly. A road would
10 traverse an area of concern, a road would not traverse
11 a reserve. In reserves no operations at all with the
12 exception possibly of protection.

13 THE CHAIRMAN: Okay.

14 MR. BISSCHOP: And that is how I would
15 define the term reserve.

16 MR. EDWARDS: Q. Thank you very much,
17 sir. Sir, in your evidence-in-chief at page 23371 you
18 - and this may have just been a turn of phrase - you
19 made a reference to a complete reserve. You indicated:

20 "There may be situations where maximum
21 protection through a complete reserve
22 with no harvest, renewal and tending
23 operations will occur."

24 There is no difference then between a
25 complete reserve and a reserve?

1 MR. BISSCHOP: A. Just hearing those
2 words, I think I probably used the word reserve there
3 incorrectly; I should have used the word area of
4 concern.

5 Q. So we can agree then that a reserve
6 by definition will be an area that roads do not go?

7 A. Exactly.

8 Q. Thank you. Now, if I might address
9 the evidence with respect to the Red Lake Crown
10 Management Unit. Mr. Multamaki, I believe you might be
11 the appropriate witness here.

12 You gave some evidence, sir, as I recall
13 respecting the creation of or dealing with the Little
14 Vermilion Lake situation where the tourist outfitters
15 there apparently came to some agreement with a local
16 timber industry personnel respecting the size of - and
17 I am hesitating to use the word here - the size of a
18 reserve or the size of a buffer or the size of
19 something around a lake.

20 And perhaps you can tell me what the
21 appropriate word would be?

22 MR. MULTAMAKI: A. I think what you are
23 referring to is the fact that there were three-way
24 negotiations that took place between the Ministry of
25 Natural Resources; i.e., the planning team, the tourist

1 operators -- the two tourist operators on the lake, and
2 the timber operator that had the licence for the
3 area -- the timber licence for the area.

4 And I think the word you are looking for
5 is, the prescription that was developed for that area
6 of concern No. 29 was, in fact, a negotiated
7 prescription within the area of concern identified
8 along the lakeshore of Little Vermilion Lake.

9 MR. EDWARDS: Mr. Chairman, just before I
10 go on in this area, I do intend to ask a few questions
11 here. I just wanted to make it clear that the term and
12 condition which I am just leaving which we will seek,
13 will be one which would set out that definition
14 somewhere so that it's more clear than it may be
15 through these several documents as to the exact meaning
16 of that term, because we intend to address the issue of
17 when a reserve, as now defined, ought to be
18 appropriate.

19 THE CHAIRMAN: Very well.

20 MR. EDWARDS: Q. But, Mr. Multamaki,
21 taking you, sir, from that. The prescription that
22 arose from these three-cornered discussions still
23 resulted in the outfitters in that area receiving
24 perhaps a 400- to 800-foot ring of protection, for want
25 of a better word?

1 MR. MULTAMAKI: A. Yes. In effect, I
2 guess the negotiations that took place - I wouldn't
3 refer to them as discussions - they were, in fact,
4 negotiations under the tourism guidelines and resulted
5 in a prescription that had both a reserve component and
6 a selection or modified harvest cut component in it.

7 And, in fact, it was an area of concern
8 that was 240 metres in size; the first half or the
9 first 120 metres being a no-cut reserve, the back 121
10 metres to 240-metre zone or area of that area of
11 concern having a prescription that was selection
12 harvest or negotiated selection harvest.

13 Q. And when you use the term 'no-cut
14 reserve' that is almost a totality, it's just a reserve
15 where no timber management would take place, including
16 no roads; is that correct?

17 A. No operations, yes.

18 Q. No operations. The only thing that
19 might occur would be protection in that --

20 A. Protection.

21 Q. --200 metre, 200...

22 A. It was 120 metres. The first 120
23 metres of the 240 metres was reserve.

24 Q. Yes, thank you. Now, sir, we had
25 some discussion in Panel 14 about the area that I am

1 intending to go into now; and, that is, what type of
2 reserve is necessary to protect a tourism value, and it
3 was your experience that this size of reserve was
4 sufficient to address the concerns of the tourist
5 outfitters in your management unit.

6 A. Yes. I think what -- or what, in
7 fact, took place there was individual negotiations with
8 the two affected tourist operators and, in fact, the
9 resolution was this two zone or whatever prescription
10 within the area of concern on Little Vermilion Lake.

11 Q. And your experience was that the
12 outfitters in that case were satisfied?

13 A. Yes, they seemed to be satisfied.

14 Q. Now, the result of that prescription,
15 which was the 120 metres reserve and then a further
16 prescribed area meant that, sir, there were no user
17 conflicts about roads; is that correct?

18 A. User conflicts in what way?

19 Q. Conflicts as between timber
20 management companies which didn't want people going
21 down the roads, or persons who -- members of the public
22 who wanted to go down, or between tourist outfitters
23 and members of the public who may have had different
24 views about going down a road, those conflicts did not
25 exist because the roads didn't exist; is that correct?

1 A. I think I should perhaps explain a
2 little bit of the background on the Little Vermilion
3 Lake negotiations. In fact, all of the roads --

4 Q. Sir, I am going to invite you to do
5 that, but before you do that, could you try to address
6 that question.

7 Did it mean that there was no conflict
8 because there was no roads, at least there couldn't
9 have been conflict over roads if there is no roads;
10 would you agree with that?

11 A. Within the area of concern? You have
12 to remember that --

13 Q. Within the reserve.

14 MR. CASSIDY: Well, can he let the
15 witness answer the question. If the witness feels it's
16 necessary to give some background, he should be given
17 the opportunity to do that.

18 MR. EDWARDS: Q. Well, with respect, I
19 am just asking him to be responsive and he will have
20 all the time in the world to explain it if he chooses
21 to.

22 THE CHAIRMAN: Okay. Perhaps we can
23 speed this up. The question was: Were there any
24 roads, and your answer to that was?

25 MR. MULTAMAKI: Not within a reserve, the

1 120-metre reserve or the 240-metre area of concern,
2 there were no roads.

3 MR. EDWARDS: Q. All right. As a result
4 of that, sir, were there any conflicts about roads in
5 that 240-metre zone?

6 MR. MULTAMAKI: A. No.

7 Q. Now, sir, I understand you wish to
8 explain the background further, and please do so.

9 A. I guess that was under the assumption
10 that there were roads in the allocations that were
11 immediately behind, or that were being operated behind
12 the 240-metre area -- or area of concern and, in fact,
13 there were some concerns expressed by one member of the
14 public who wanted access to Little Vermilion Lake for
15 recreational purposes.

16 I should also point out that, in fact,
17 within the first year of the implementation of the
18 closed roads policy there was -- one of the tourist
19 operators, in fact, was in the situation where he had
20 in fact moved material in for construction of a camp
21 over that road and was subject to violation of the
22 closed road policy.

23 So there were some concerns about the
24 closed road. In fact, I guess essentially the first
25 person to get caught on the closed road with no

1 business being there was, in fact, the tourist operator
2 that fought for the closed road.

3 Q. Is this the story that Mr. Pyzer
4 recounted earlier as well?

5 A. No, I am not sure about Mr. Pzyer,
6 this is one incidence in --

7 Q. I see.

8 A. That I'm aware of.

9 Q. But, sir, the point I am getting at
10 is that if this member of the public that wished to get
11 to Little Vermilion Lake over a road, at the very least
12 that member of the public would have to hike 240 metres
13 from the end of the road that existed?

14 A. If those roads had been opened to the
15 public, yes, that's correct.

16 Q. If they had been, yes.

17 A. Yes.

18 THE CHAIRMAN: Excuse us just a moment.

19 ---Discussion off the record

20 THE CHAIRMAN: Sorry, go ahead.

21 MR. EDWARDS: Q. And, sir, is it your
22 evidence that the roads had some use controls or use
23 restrictions on them even -- or where they existed more
24 than 240 metres from Little Vermilion Lake?

25 MR. MULTAMAKI: A. Yes. If you remember

1 our evidence on the preliminary areas of concern where
2 there was a two-kilometre zone around little Vermilion
3 Lake that came through the West Patricia Land Use
4 Guidelines.

5 Q. Yes.

6 A. There were use restrictions on roads
7 within that immediate area.

8 Q. Thank you. I may not have been here
9 for that, sir. Could you refresh me as to whether
10 those use restrictions were enforced by way of gate or
11 by sign?

12 A. Those use restrictions were enforced
13 in all cases by signs and, in fact, subject to the
14 Public Lands Act.

15 Q. Now, sir, you gave some evidence
16 about the size of the reserve in chief and you have
17 recounted some today. Do you know Mr. Munford, Rod
18 Munford?

19 A. Yes, I do.

20 Q. I understand he was a member of
21 the -- or he was one of the persons identified in the
22 initial stages as receiving notice of the Red Lake
23 Crown Management Plan?

24 A. That's correct.

25 Q. And do you know him as a person who

1 has been involved in numerous discussions with the MNR
2 over the issues of road access?

3 A. I have had the opportunity of being
4 in a number of discussions with him over a variety of
5 situations including road access.

6 Q. Right.

7 MR. KENNEDY: A. And I should add that I
8 have also had that opportunity over a large number of
9 years.

10 Q. With respect to a number of plans,
11 Mr. Kennedy?

12 A. Yes.

13 Q. And obviously not just in Red Lake?

14 A. This is -- the plans I am referring
15 to are in the Dryden District, a variety of plans.

16 Q. Right. Now, sir, again going back to
17 you, Mr. Multamaki. Would you understand, sir, that
18 the reserve that was even left for these -- that was
19 left to these outfitters after these negotiations was
20 significantly larger than the norm across the area of
21 the undertaking?

22 MR. MULTAMAKI: A. I would say that the
23 area of concern that was identified, 240 metres, was a
24 special situation on the Red Lake Crown Management Unit
25 and, in fact, it was larger than any of the other areas

1 of concern identified for any other purpose or reason
2 on the Red Lake Crown and, in fact, it was negotiated
3 under the tourism guidelines.

4 Q. And even prior to this reduced area
5 of concern or, at least, the previous doughnut had been
6 even larger; had it not?

7 A. Yes. The previous doughnut, as you
8 put it, was in fact larger. It was a no-cut reserve of
9 800 feet or 240 metres of reserve.

10 Q. And I recall, I believe your
11 evidence-in-chief was that you did not know the origin
12 of that 800-foot doughnut?

13 A. No. I was not in the district at the
14 time that that issue had been negotiated but, as I
15 understand it, it had been negotiated between the MNR
16 staff; i.e., the district manager or those members of
17 his staff and the tourist operators on Little Vermilion
18 Lake.

19 THE CHAIRMAN: Mr. Edwards, where are you
20 going with this particular line of questioning?

21 MR. EDWARDS: Okay. The exact point I am
22 hoping to make - and I am going to make it right now, I
23 hope - is the reserve that was left, even after this
24 doughnut was cut in half, is still significantly larger
25 than the norm. And it is our view that this is

1 atypical situation and it's no surprise that these
2 outfitters were happy because they sure got -- they got
3 good treatment.

4 I am not criticizing the MNR for that,
5 it's just that if it's being offered as a typical
6 example of resolving the user conflict as amongst
7 tourist outfitters and industry and MNR, it would be
8 our -- we would join issue on that point and suggest
9 that it is atypical.

10 And while perhaps it may be a positive
11 example, we are not suggesting it's representative, and
12 I am just going to ask Mr. Multamaki about that as to
13 whether he thought it was representative or not.

14 Q. Mr. Multamaki, now that I have laid
15 my cards on the table and suggested to you, sir, that
16 this was an atypical situation and the outfitters got
17 particularly good treatment - I guess from our point of
18 view, for which you deserve some credit - would you
19 agree that it was atypical, as compared with other
20 situations you are familiar with across the area of the
21 undertaking?

22 MR. MULTAMAKI: A. Obviously I am not
23 familiar with all of the reserves or the area of
24 concern negotiations that have taken place across the
25 area of the undertaking; however, I can think of

1 several instances where negotiations have taken place
2 and resulted in 120 metre no-cut reserves or reserves
3 around tourism establishments and tourism values.

4 I can also think of, I remember where
5 things such as skyline reserves can be put in place and
6 so on. So I am not sure that it's atypical, I think
7 it's simply a result of a negotiation process that
8 takes place under the tourism guidelines and, in fact,
9 the tourist operators on the lake seemed to be
10 satisfied with what took place.

11 MR. FLEET: A. Mr. Edwards, with respect
12 to the continued reference to the standard, it's really
13 I think the Ministry's position that there is no
14 standard 120-metre donuts as a blanket prescription.

15 A couple of things happened. There are
16 some holdouts, if you would, as directed by District
17 Land Use Guidelines with respect to 120-metre
18 prescriptions; for example, the cottaging example we
19 are dealing with this morning.

20 In that instance, as I described this
21 morning, we were able to negotiate and that would too
22 be typical, in excess of 120 metres on part of the lake
23 and 120 metres on another part of the lake. But if I
24 could just share with you my experience with respect to
25 what happens during negotiation, as Mr. Multamaki has

1 talked to, on tourism lakes, the tourism individual --
2 people have copies of the guidelines and they say:
3 Let's not have the 120-metre reserves anymore, okay, we
4 can do better; in instances we don't need that much;
5 and, in other instances, we need more.

6 Well, what happens is in certain
7 instances -- or in few instances industry comes to the
8 table thinking less and tourism comes to the table
9 thinking more and we ultimately settle on 120 again
10 which is right where we began. Okay.

11 So, in a sense, like it is not our
12 position that 120 is the standard, but it seems to be
13 something that everybody ends up being comfortable
14 with.

15 Q. I am sorry.

16 MR. MULTAMAKI: A. I was going to say, I
17 would also like to add that in all of the planning
18 teams that I have taken part in there have been
19 examples of where greater than 120 metres have been
20 offered under the tourism guidelines or have been
21 prescribed under the tourism guidelines for the
22 protection of tourism values, and I am thinking with
23 respect to areas around main base lodges and so on.

24 So, you know, when you talk about typical
25 situations, I think Mr. Fleet has pretty well hit the

1 point right on, in that I am not sure what the typical
2 situation would be because each tourist operator claims
3 quite comfortably that they are not the typical
4 operation, in fact they are all different, it has been
5 my experience. And when you talk to them, one of the
6 standard lines is that my clientele aren't typical of
7 everybody else's.

8 MR. McNICOL: A. Mr. Edwards, Mr.
9 Fleet's quite right in terms of characterizing the
10 tourism guidelines as not something that -- looking for
11 typical solutions to problems. In fact, the whole
12 premise of the tourism guidelines is that you should
13 look at each situation individually and come up with a
14 prescription that is going to deal specifically with
15 that tourist outfitter's concerns on that particular
16 waterbody or chain of waterbodies.

17 So that to say that we are -- that a
18 120-metre doughnut, if you will, is typical or atypical
19 you can't -- there is nothing that is typical about the
20 types of --

21 Q. There is no standard; is that what
22 you are saying, sir?

23 A. In essence, I am saying there is no
24 standards. Each situation is judged on its own merit.

25 Q. Would any - I will address this to

1 Mr. Fleet or Mr. Multamaki - would you agree that the
2 situation in the Red Lake Crown Management Unit
3 resulted in the tourist outfitters getting a
4 prescription which was better than average as opposed
5 to better than standard?

6 THE CHAIRMAN: Well, Mr. Edwards, with
7 great respect, we have heard some evidence that there
8 isn't any particular standard, everything is decided
9 essentially on an ad hoc basis and I think, as the
10 Board understands it, it's open on the table as to what
11 the size of the reserve can be and is ultimately
12 decided often through negotiation.

13 And so, if the position is: There is no
14 standard, there is no prescribed size.

15 MR. EDWARDS: Well, there certainly isn't
16 a standard, Mr. Chairman. I am moving on, but it would
17 be my submission that there must be an average, and it
18 would be -- our point stands that the treatment that
19 was received in the particular unit - which resulted in
20 a positive result, from our point of view - was better
21 than the average treatment.

22 MR. CASSIDY: Well, this could have been
23 an opportunity for an interrogatory. I don't know
24 whether he asked it or not, to indicate that.

25 The Board -- it would have been a simple

1 matter to ask what is the average accommodation for his
2 clients. I question the utility of such evidence in
3 any event, but we are taking up time here, Mr.
4 Chairman, that I don't think is very wisely spent.

5 MR. FREIDIN: I think that might be the
6 first question that we would have objected to answer.

7 THE CHAIRMAN: Well, in any event, Mr.
8 Edwards, I think we should probably move on because...

9 MR. EDWARDS: I have one question left in
10 this area, sir, and then I intend to move on, if I may.

11 THE CHAIRMAN: Okay.

12 MR. EDWARDS: Q. Going back to the
13 original doughnut, in it's 800 foot or whatever size,
14 would any member of the panel be familiar with the
15 origin of that as having anything to do with a
16 political direction from the Minister of the day?

17 MR. KENNEDY: A. I'm not aware of such
18 direction. I believe though that in part the origin
19 may have been in conjunction with the development of
20 the West Patricia Land Use Plan and I would draw your
21 attention to the references that we made in discussions
22 surrounding Exhibit 889 which provide some historical
23 context to that situation.

24 Q. I am sorry, Mr. Kennedy, which
25 reference is that, please?

1 A. Exhibit 889.

2 Q. Which is what, sir?

3 A. Which is excerpts from the West
4 Patricia Land Use Plan.

5 Q. Oh right. Thank you.

6 A. The proposed policy and optional
7 plans where we discuss the land use activity for zone
8 No. 22.

9 Q. Panel, I next intend to ask you some
10 questions which relate to your term and condition 29
11 which deals with contingency plans.

12 It would be the submission of my client
13 at the appropriate time that the term and condition
14 which provides clear rules and sanctions -- rules or
15 sanctions or indeed orders for cessation of activity of
16 certain timber management planning is not in place,
17 rather than the proposal which would be, I believe,
18 institutionalized by paragraph 29 of your terms and
19 conditions.

20 MR. KENNEDY: A. Was that a statement or
21 a question?

22 Q. Well, it's going to be a question. I
23 am just suggesting that our term -- the proposed terms
24 and conditions which will -- term or condition which
25 will come in from my client will deal with this issue

1 and will deal with it seeking more direction to the
2 field staff as to what should happen when the timber
3 management plan is not complete and in place in time,
4 and at some stage may result in a cessation of activity
5 or sanctions for the continuation.

6 Mr. Bisschop, were you the author of the
7 part on contingency plans, sir, or are you responsible
8 for part of it?

9 MR. BISSCHOP: A. Yes, sir.

10 Q. Sir, I am directing your attention to
11 page 474 of the witness statement and that is Exhibit
12 813A, 474. And I am also going to direct your
13 attention, sir, to Exhibit 854 which is the timber
14 management plan amendments and also deals with
15 contingency plans.

16 I would like you to look at the second
17 last page of that exhibit, sir.

18 A. Excuse me, that is 854?

19 Q. 854, yes. Do you have that, sir?

20 A. Yes, I have.

21 Q. Now, sir, it would seem to me that --
22 I just have some difficulty in reconciling the
23 statements at the bottom of 474 and going up to 475 and
24 then part of 854, and if I might just read them to you.
25 If you look at page 474:

1 "In the production of a scheduled renewal
2 of a timber management plan,
3 unpredictable and uncontrollable
4 circumstances may arise which cause the
5 schedule for plan production, review and
6 approval to be unattainable by the
7 required due date. In such situations
8 some operations must be permitted to
9 proceed in order to maintain employment."
10 And if you juxtapose that with Exhibit
11 854, sir, the basic premises in sub I; do you have
12 that?

13 A. Yes.

14 Q. "If something goes wrong in TMP
15 production review and approval,
16 operations must still be permitted to
17 proceed."

18 Now, sir --

19 MR. FREIDIN: What are you referring to?

20 MR. EDWARDS: Mr. Freidin, that is in
21 Exhibit 854 I just quoted from.

22 THE CHAIRMAN: 854H, I believe.

23 MR. EDWARDS: H, yes, the second last
24 page.

25 MR. FREIDIN: Thank you.

1 MR. EDWARDS: Q. Now, sir, what
2 operations, if any, would be restricted when a TMP is
3 not in place if there has been some -- if the plan
4 production is unattainable by the required due date and
5 some operations must be permitted to proceed in order
6 to maintain employment, are there any operations which
7 are not permitted?

8 MR. BISSCHOP: A. Provided there is a
9 form of approval I can't see that there would be
10 operations that would not be permitted. There is no
11 question that the emphasis certainly would be on
12 continuing harvest operations, but I can't see that
13 there would actually be a restriction on operations
14 because the intent would be to have some form of
15 approval in place to allow any operations to proceed.

16 Q. I see. The Exhibit 854 just says
17 operations must be permitted to proceed, and the
18 witness statement says some operations must be
19 permitted to proceed. Are they really to be read as if
20 they were in Exhibit 854?

21 A. The word 'some' on page 475 is
22 probably unnecessary. It's simply an indication that
23 there will have to be provision for operations to
24 proceed. I think it's probably unnecessary.

25 MR. FLEET: A. Mr. Edwards, I think what

1 we mean here by 'operations must be permitted to
2 proceed', is that some of the operations would be all
3 of the activities on some of the area, as an example,
4 so that if the plan in totality for some reason or
5 event could not be approved by the required due date on
6 part of the area, that is what the contingency plan
7 would cover.

8 And, in addition, perhaps what Mr.
9 Bisschop said with respect to: Would all activities be
10 permitted to proceed, if the event which caused the
11 delay in the approval of the timber management plan was
12 an unresolved issue or a bump-up request, we fully
13 expect, for example, that if that were geographically
14 definable or a specific issue, we would stay away from
15 that operation -- operations such as harvesting if that
16 were a contentious operation.

17 Q. So in a particular area -- I mean,
18 you may have--

19 A. For example --

20 Q. --all of the operations but in some
21 of the area?

22 A. For example, on the Timmins Forest
23 where we do have an individual EA designation request,
24 if it were a bump-up and we weren't able to approve the
25 plan on time, we would have endeavored to allow some

1 operations to proceed in the non-contentious area of
2 that particular timber management plan. We would
3 obviously not have intruded into that particular
4 designation request area.

5 Q. Sir, is that direction set out
6 anywhere or is there a direction to that effect?

7 A. I am not aware of any. Mr. Bisschop,
8 maybe you can help me.

9 MR. BISSCHOP: A. In the specific case
10 of dealing with the bump-up request?

11 Q: All right, that will be a fine
12 example and then we will ask the more general case.

13 A. I ask that because I can point you to
14 something in the draft terms and conditions that deals
15 with that instance.

16 Q. Okay.

17 A. And that would be condition No. 25,
18 item (g) where we speak to:

19 "Partial or conditional approval of a
20 plan may be granted."

21 The idea there is that approval of
22 non-contentious parts of the plan would be granted so
23 that operations could proceed.

24 Q. I see. So timber extraction could
25 continue but perhaps, for example, a contentious road

1 would not be constructed until the process had resolved
2 itself?

3 A. That's another example, yes.

4 Q. Sir, in the absence of a bump-up
5 request; that is to say, if you just don't have a
6 timber management plan done by the date it's supposed
7 to be done, are there any limitations on the operations
8 in that circumstance?

9 MR. FLEET: A. The limitations are that
10 they would have to be conducted under the authority of
11 a contingency plan and the two common examples of --
12 and I don't mean to imply that contingency plans are
13 common, but the examples that I have seen of
14 contingency plans are either the further conducting of
15 timber activities, if there are some remaining in the
16 previous plan; in other words, if we didn't balance all
17 the numbers to zero in terms of harvest area and so
18 forth, there may be a hundred hectares left that we
19 could continue to operate in until we did get approval
20 of a plan. That hundred hectares would have prior
21 approval under the previous timber management plan
22 process. So that is one common example.

23 Q. Sir, if I could interrupt you just
24 there. Would that involve -- or could it possibly
25 involve operating the contingency area from the

1 previous five-year plan?

2 A. That is a possibility too, yes.

3 And the other example of a contingency plan would be to
4 proceed to implement - if it was not contentious - the
5 first annual work schedule which would have been
6 prepared simultaneously to the timber management plan
7 because it too was due on April the 1st.

8 If there were no contentious -- if that
9 was not part of the -- well, I guess we are talking
10 about a delayed approval without respect to a
11 contentious issue. That's the other common example,
12 sir.

13 Q. Sir, what about the use of district
14 cutting licences?

15 MR. FREIDIN: Well, I am just...

16 MR. KENNEDY: Excuse me, Mr. Edwards.
17 The simple answer to your line of questioning is that
18 some form of approval is required prior to operations
19 being permitted to proceed.

20 MR. EDWARDS: Q. And the approval would
21 come from...?

22 MR. KENNEDY: A. The approval would be
23 in the form of an approved timber management plan or a
24 contingency plan. An item such as a district cutting
25 licence alone in the absence of an approved plan would

1 not suffice.

2 Q. Has that always been the case?

3 Q. It has always been the case; however,
4 there is some interpretation that is required as a
5 result of the specific regulations of the Crown Timber
6 Act which historically talks of a level of approval
7 being required prior to the operations proceeding and
8 also talks of, in the historic sense, the approval can
9 be in the form of a management plan or one of the other
10 documents. This is no longer the case in that we have
11 eliminated the operating plan from our planning
12 process.

13 Q. Sir, with respect to the use of
14 district cutting licences, what areas are they allowed
15 to deal with?

16 A. District cutting licences would be
17 used to licence timber that would be outlined in an
18 approved timber management plan.

19 Q. All right. Is there any particular
20 size of limitation on a district cutting licence?

21 A. I am not up to date, as current as
22 this year, but when I was still in the district there
23 was a limitation based on the dollar value. That's
24 associated with the value of the timber that is being
25 harvested from an area and, therefore, the size would

1 vary according to the value of the timber involved.

2 Q. So it was a monetary rather than an
3 area limitation?

4 A. Yes. I'm not sure if that's still
5 the case.

6 MR. GROVES: A. I can maybe add more to
7 that.

8 Q. Is there another panel member who can
9 address that issue, please?

10 MR. GROVES: A. Yes. Under the Crown
11 Timber Act you find it's restricted to a size of 65
12 hectares and in policy you'll find it restricted to a
13 value of \$10,000.

14 Q. Is that -- now, you will have to
15 assist me here, sir. 65 hectares, is that same as 160
16 acres?

17 A. Yes.

18 Q. All right. So that would be Section
19 2 sub (7) of the Crown Timber act which is what you are
20 referring to; is it not?

21 A. Probably. I don't know the sections
22 by heart.

23 Q. Notwithstanding, if I may quote it to
24 you:

25 "Notwithstanding subsection 1, the

1 Minister may grant a licence to cut Crown
2 timber at such prices and subject to such
3 terms and conditions as he considers
4 proper if the licenced area does not
5 exceed 160 acres."

6 Does did that ring a bell?

7 A. Yes.

8 Q. And it's my understanding that that
9 subsection refers to district cutting licences; is that
10 also your understanding of the Act?

11 A. Yes.

12 THE CHAIRMAN: Mr. Bisschop, I would like
13 to ask you a question. If the Minister of the
14 Environment granted a bump-up request and, therefore, a
15 particular area was going to be subject to a separate
16 EA, is not the only way that you could conduct
17 operations of any kind on that area through an
18 exemption under the Environmental Assessment Act
19 pending the approval of that individual bump-up under
20 the environmental assessment and not through a
21 contingency plan approved by the Minister of Natural
22 Resources, once the request for a bump-up has been
23 granted by the Minister of Environment?

24 MR. BISSCHOP: In some ways I was
25 anticipating your question, Mr. Chairman, because I

1 wanted to make a comment that I think a contingency
2 plan should be looked at in terms of the way we propose
3 it within the context of a Class EA as dealing with two
4 things: providing for the necessary approvals that are
5 required under the Crown Timber Act to allow operations
6 to proceed under the Crown Timber act, and within the
7 context of our approach under the Class EA, the
8 approval under the Environmental Assessment Act which
9 the Board will determine and, in effect --

10 THE CHAIRMAN: Yes, once you get into the
11 bump-up situation, you are then under the Environmental
12 Assessment act per se and, therefore, the only way out
13 of that would be some kind of an exemption by
14 Order-in-Council pending a resolution of that separate
15 environmental assessment.

16 Would that not be the case? I am posing
17 that as a question, I don't know if that is the answer.

18 MR. BISSCHOP: I would suggest, sir,
19 we view the contingency plan provision as dealing with
20 that bump-up situation and as being a matter for the
21 Board to decide in terms of the Environmental
22 Assessment Act approval.

23 So I don't see, with our provision of the
24 contingency plan --

25 THE CHAIRMAN: But it's not the Board

1 that grants the bump-up, that is my dilemma -- that is
2 the Board's dilemma.

3 MR. FREIDIN: Mr. Chairman, if I might.
4 I think -- I was going to rise before because I wasn't
5 sure whether your question was using a hypothetical
6 situation of a bump-up of a whole plan or a bump-up of
7 part of a plan.

8 THE CHAIRMAN: Part.

9 MR. FREIDIN: Now, a bump-up of part of a
10 plan is probably what we are going to have, and if
11 the--

12 THE CHAIRMAN: It's a bump-up of part of
13 the plan.

14 MR. FREIDIN: --bump-up of part of plan
15 refers to the harvest in a certain area--

16 THE CHAIRMAN: Right.

17 MR. FREIDIN: --or that construction of a
18 road between A and B--

19 THE CHAIRMAN: Right.

20 MR. FREIDIN: --it will be clear what the
21 geographical extent of the operations are and what the
22 activity is. And, in that case, I think what we are
23 saying, or what we'd say is: Until such time as the
24 bump-up request is dealt with, there won't be any
25 operations of that type on those specific areas, but

1 you can go ahead and carry out other approved
2 activities in the plan in the other areas.

3 So in that case --

4 THE CHAIRMAN: No, that is not a problem.
5 I accept that. What I am saying --

6 MR. CASSIDY: Well, I think it may be a
7 problem for some of us.

8 THE CHAIRMAN: Sorry?

9 MR. CASSIDY: It may be a problem for
10 some of us. That was one of the points of my
11 cross-examination this morning, if a request takes a
12 year and a half for the steering committee to look at
13 it --

14 THE CHAIRMAN: Okay. No, no, no, I don't
15 mean it's not a problem.

16 MR. CASSIDY: Thank you.

17 THE CHAIRMAN: I mean, it's not a problem
18 for the Board to understand what Mr. Freidin is getting
19 at.

20 MR. CASSIDY: Thank you.

21 THE CHAIRMAN: What I am saying is, once
22 the bump-up request has been dealt with by the Minister
23 of the Environment, then you can't carry on any
24 activities within that area which will then be subject
25 to an individual environmental assessment unless it

1 were dealt with by an exemption -- an Order-in-Council
2 exemption to carry on certain activities pending the
3 resolution of the separate environmental assessment,
4 and that would have to emanate from Cabinet presumably
5 and it couldn't be handled under the auspices of a
6 contingency plan approved by the Minister of Natural
7 Resources. I think that's my point.

8 MR. FREIDIN: A hypothetical situation
9 being then, you have a bump-up for a certain--

10 THE CHAIRMAN: Area.

11 MR. FREIDIN: --for harvesting in a
12 certain geographical area, the request is granted, an
13 individual environmental assessment proceeds.

14 THE CHAIRMAN: Yes.

15 MR. FREIDIN: And your question then is,
16 could...?

17 THE CHAIRMAN: You can't deal with it?

18 MR. FREIDIN: Could operations which were
19 the subject of the bump-up--

20 THE CHAIRMAN: Right.

21 MR. FREIDIN: --be permitted in that area
22 through the contingency plan?

23 THE CHAIRMAN: That's right.

24 MR. FREIDIN: That is your question?

25 THE CHAIRMAN: That's the question.

1 MR. FREIDIN: I think the answer to that
2 is no, the specific activity you're talking about.

3 MR. EDWARDS: If I could ask a follow-up
4 question to that.

5 THE CHAIRMAN: Well, is the answer to
6 that no?

7 MR. EDWARDS: Q. Would you agree with
8 your counsel on that, sir? Do you adopt the answer
9 given by your counsel?

10 MR. FREIDIN: You know, if I'm wrong,
11 people have told me before, so...

12 MR. EDWARDS: Q. Mr. Bisschop, can you
13 adopt the answer given by your counsel?

14 THE CHAIRMAN: The reason I am
15 questioning that, Mr. Bisschop, is because of the words
16 of the proposed condition 25(g) where you talk about:
17 where it's successful, the request for the bump-up is
18 successful, you can still conduct partial -- or
19 conditional approval may be granted in consultation
20 with the Environmental Assessment Branch and the
21 Ministry of Natural Resources, presumably.

22 What I am saying is, I am not sure you
23 can do that without getting an exemption from Cabinet
24 pending the EA being completed and a decision rendered.

25 MR. FREIDIN: If the area where you are

1 going to get the partial or conditional approval is the
2 same area--

3 THE CHAIRMAN: Yes.

4 MR. FREIDIN: --and the same activities
5 which are the subject of the bump-up?

6 THE CHAIRMAN: Yes.

7 MR. FREIDIN: All right.

8 MR. BISSCHOP: And part of my hesitation,
9 Mr. Chairman, is I am wondering whether we have thought
10 of this. But I would like to take you to the Class EA,
11 I think page 182.

12 THE CHAIRMAN: I guess all I am
13 questioning is whether the wording of your condition of
14 approval is capable of being implemented in the way you
15 are suggesting without an Order-in-Council exempting
16 that particular activity pending the decision on the
17 EA?

18 MR. FREIDIN: Right. I think your
19 question has some -- I mean, I got up because I think
20 it has legal overtones and I think - we are not trying
21 to play, you know, silly bugger or anything, I think we
22 want to give you a straight answer to a very straight
23 question.

24 And I think maybe the best thing to do,
25 again, if I could have -- if Mr. Bisschop is not so

1 comfortable dealing with that specific question now,
2 then I would like the opportunity to speak to him and
3 we will give you a straight answer to the question next
4 week.

5 THE CHAIRMAN: It may well be that it
6 just requires some change in wording to accomplish the
7 same ends, but since we are dealing with the conditions
8 and since you referred in your examination to this
9 condition, I guess I just raise the possibility that
10 you can't accomplish, with the way you have worded it,
11 what you are attempting to accomplish.

12 MR. FREIDIN: And I understand your
13 concern and the import of your question, I think.

14 MR. EDWARDS: Mr. Chairman, I would
15 like --

16 MR. FREIDIN: My concern is that Mr.
17 Bisschop might not and I think there is no reason to
18 confuse things.

19 THE CHAIRMAN: Okay.

20 MR. EDWARDS: Mr. Chairman, I would like
21 to have the follow-up question asked as well, whether
22 the same answer would be given if the present situation
23 where the request is for a designation as opposed to a
24 bump-up, and if there is any difference in the answer,
25 I would like to know.

1 MR. FREIDIN: Well, I think we have to
2 look.

3 MR. BISSCHOP: Mr. Chairman, these are
4 matters I think I and the Ministry would need some time
5 to consider.

6 THE CHAIRMAN: And I suggest to you also,
7 if EA PIP ever gets to resolution, we are all going to
8 be faced with interpreting a new set of conditions
9 related to bump-up and designation in any event, but
10 however...

11 MR. BISSCHOP: I still think though, if I
12 could, I would like to make my point about page 182.

13 THE CHAIRMAN: Okay. Go ahead.

14 MR. BISSCHOP: Starting on the back of
15 page 181 we speak to, in effect, why contingency plans
16 might be necessary. We provide examples starting on
17 page 182 at line 3, and perhaps it's best that I read
18 it. We say:

19 "For example, such situations could
20 occur because of staff being redirected
21 to deal with forest fire emergencies,
22 because a new forest management agreement
23 is being negotiated, or as a result of a
24 successful bump-up request. In such
25 situations, some operation must be

1 permitted to proceed..." et cetera.

2 At that time that this was written we had
3 contemplated - and this is what I think I was dealing
4 with earlier on - that contingency plan would be a
5 vehicle that we would use in the case of successful
6 bump-up requests and that we would effectively have EA
7 Act approval for the use of contingency plan through
8 the decision that is made on this Class EA and,
9 therefore, further approval under the Act through
10 exemption would not be required.

11 That is how I would understand the way we
12 dealt with it here. That, in effect, the Board making
13 a decision to, on this specific matter, approve our
14 approach to contingency plans, in the case of a
15 successful bump-up request, we would have our
16 Environmental Assessment Act approval.

17 MR. EDWARDS: Perhaps we can explore that
18 further on Tuesday, Mr. Chairman. I have about three
19 more questions and I think --

20 MR. FREIDIN: I just want to understand
21 that I think the Chairman -- you are asking whether in
22 fact that proposition extends as far as saying that
23 that contingency plan could, in fact, permit operations
24 in the area which was the subject of the bump-up and
25 the very activity in that area which gave rise to the

1 concern.

2 I think you want to know whether the
3 request is going to that extent or whether it's limited
4 in the way that you and I --

5 THE CHAIRMAN: That's right. Will the
6 effect of this Board's approval to your contingency
7 plan procedures operate as the equivalent, in effect,
8 of an exemption for the activity for which a bump-up
9 has been granted and prior to the separate EA being
10 resolved by the decision?

11 And that is an interesting neat legal
12 question that I am not sure you can answer nor us at
13 the moment, and will probably be the subject of some
14 argument at the end.

15 MR. FREIDIN: I think it's advisable that
16 we make it clear what the --

17 THE CHAIRMAN: Ministry's position is.

18 MR. FREIDIN: In fact, what it is we are
19 requesting.

20 THE CHAIRMAN: That's right.

21 MR. FREIDIN: And Mr. Bisschop and I, as
22 I understand, and whoever, have leave to discuss this
23 matter.

24 THE CHAIRMAN: I would suggest as well
25 you probably bring the Ministry of the Environment into

1 those discussions.

2 MR. FREIDIN: Well, I think I will just
3 go with Mr. Bisschop first and find out what he...

4 THE CHAIRMAN: Okay.

5 MR. BISSCHOP: I understand the
6 situation.

7 THE CHAIRMAN: Sorry, Mr. Edwards, we got
8 sidetracked.

9 MR. EDWARDS: Right. And, Mr. Chairman,
10 I think it was on a very important point.

11 Q. And, Mr. Bisschop, just one further
12 question which parallels the problem we have been
13 discussing for the past 15 minutes.

14 At the present time, when a request for a
15 designation is made, does that request for a
16 designation have any impact on timber management
17 operations in the absence of an approved plan?

18 MR. BISSCHOP: A. We have the exemption
19 order that we are dealing with.

20 Q. Right.

21 A. Exemption order MNR 11-9. There are
22 situations where we get designation requests. We are
23 able to proceed with approved -- plans that MNR
24 approves under the exemption request, we would proceed
25 with, in the case of someone seeking designation, with

1 non-contentious operations. That is how --

2 Q. On the strength of the existing
3 exemption order?

4 A. That's right. And that's how, for
5 example, I understand that Mr. Fleet and Timmins
6 District have dealt with the situation with respect to
7 Marceau Lake. We proceeded with our own approval,
8 which is current practice, to operate in the
9 non-contentious areas pending resolution of that
10 request.

11 Q. I just have a final question, sir,
12 going back again to the use of district cutting
13 licences. You have indicated there is an area
14 limitation on the DCL which is set out in this section
15 of the Crown Timber Act and there is a \$10,000 monetary
16 limit as well.

17 Where is that set out? Can anybody on
18 the panel address that, please?

19 MR. KENNEDY: A. I believe it's set out
20 in the timber sales bulletin with regards to the
21 licensing procedures.

22 Q. I see. And how long has that timber
23 sales bulletin been in effect?

24 A. Well, there has been -- there
25 probably has been changes in the dollar amount. It's

1 been in effect at least during my period of employment,
2 since 1977.

3 Q. I see.

4 MR. EDWARDS: Thank you. Mr. Chairman,
5 since I am going to move into quite a different area,
6 this would be an appropriate time to break.

7 THE CHAIRMAN: Very well.

8 MR. FREIDIN: Mr. Chairman, I would just
9 like to make one observation. I think Mr. Edwards'
10 examination, by directing it to the terms and
11 conditions, has perhaps been an indication that the
12 Board has been heard.

13 Perhaps I would like to just throw it out
14 for people to think about, that maybe the Board should
15 consider providing some guidance to other parties who
16 are going to have to put in their terms and conditions,
17 that to facilitate the comparison of what the Ministry
18 is seeking and what other people are seeking, that if
19 they could, in fact, put their terms and conditions in
20 a fashion following the same headings that we have,
21 using the headings in the same order, indicating by
22 specific term and condition that they may want to
23 change this by adding this requirement, and then maybe
24 saying in relation, say, to planning teams, there are
25 three things they didn't even think about, we want

1 terms and conditions about that and they added those.

2 But if that similar format was
3 followed -- and then at the end they could say there
4 are subject matters they didn't deal with and add those
5 at the end, we could put a line up across the page, it
6 would be easier to see what the differences really are.

7 And I just throw that out as a suggestion
8 because that was the intent of me getting up when Mr.
9 Edwards was talking.

10 THE CHAIRMAN: Well, we are going to
11 hopefully deal with that kind of thing on Tuesday. The
12 Board was going to comment though before you rose, Mr.
13 Freidin, that we found Mr. Edwards' examination helpful
14 in the sense that it focused the concerns of his client
15 to areas which were then related to conditions of
16 approval and also gave the Board an indication of
17 where, in his case, he would call evidence to support
18 what his client's contention was with respect to the
19 Ministry's position.

20 So rather than an unfocused
21 cross-examination, it is that type of examination and
22 perhaps refined to a greater degree that the Board
23 would find helpful. It's helpful in terms of
24 expediting the cross-examination in the first instance,
25 but more than that, it's helpful in defining for the

1 Board those areas of dispute between the various
2 positions put forward.

3 And that is what we have been seeking for
4 some time now to suggest, that it's a procedure the
5 parties should hopefully adopt and, of course, we will
6 speak to that more next week when we have all of the
7 suggestions on the table.

8 With regard to -- sorry, Mr. Edwards, do
9 you want to say something?

10 MR. EDWARDS: Mr. Chairman, before the
11 Board rises, could you confirm when we will be
12 reconvening in this location, please?

13 THE CHAIRMAN: Yes. The Board wanted to
14 announce for the purposes of the record that at the
15 request of counsel the Board has agreed to sit in
16 Toronto on Tuesday - I am not sure the reporters have
17 heard this before - but we would like to sit in Toronto
18 at the Board's Offices in our boardroom on Tuesday
19 commencing at 9:30, at which time we will deal with,
20 essentially that day, procedural matters.

21 Firstly the matters concerning the
22 procedures which may be adopted to expedite these
23 proceedings; secondly, to in effect hold a second
24 scoping session with respect to Panel 16; and, thirdly,
25 to deal with how an additional timber management plan

1 or parts thereof, in addition to the example of the Red
2 Lake Plan, might be put before the Board, if in fact
3 the Ministry advises that there is such a plan or parts
4 thereof that they wish to put before the Board.

5 And then it would be the Board's
6 intention to return to Thunder Bay Tuesday evening and
7 commence back here Wednesday morning at 8:30.

8 MR. FREIDIN: And we can leave the matter
9 then of Mr. Bisschop and I and the results of our
10 discussions awaiting Wednesday's return.

11 THE CHAIRMAN: Yes.

12 MR. FREIDIN: And that the panel would be
13 excused and Mr. Kennedy, since he's functioning as
14 quarterback, will not be expected to be in attendance
15 in Toronto?

16 THE CHAIRMAN: That's right. And we
17 would then reconvene with you, Mr. Edwards, on
18 Wednesday morning and finish off your cross-examination
19 of Panel 15 and then proceed immediately with Mr.
20 Hanna's cross-examination of Panel 15 when you are
21 through.

22 MR. EDWARDS: Just for the record, Mr.
23 Chairman, as I indicated before, due to circumstances
24 beyond my control, I will not be able to attend in
25 Toronto on Tuesday, however, I will ensure that my

1 revised statement of issues with respect to Panel 16 is
2 faxed down and that I have spoken to at least one other
3 counsel to advise of my position with respect to the
4 actions that we may take.

5 I will not be able to participate in the
6 scoping session, but I understand that hasn't always
7 been a problem in the past, and --

8 THE CHAIRMAN: All right. And we would
9 ask counsel who are going to submit their revised
10 statements of issue for Panel 16 to please get them
11 into the Board no later than Tuesday morning and we can
12 receive them down there by fax machine if necessary, so
13 that we will have an opportunity at some break after
14 the initial discussions on procedure to review them and
15 then come back the same day and deal with the scoping
16 session in open session.

17 MR. CASSIDY: Mr. Chairman, I am not
18 privy to all the discussions in respect of why we are
19 moving to Toronto. My understanding is that it was
20 made at the request of Ms. Swenarchuk, counsel for
21 Forests for Tomorrow.

22 Would the Board be able to inform me as
23 to the reasons that were behind that request.

24 THE CHAIRMAN: Well, as I understand it,
25 for some reason she was unable to attend here next

1 Tuesday, this is what the Board understands, it was
2 relayed to the Board by--

3 MR. FREIDIN: Mr. Campbell.

4 THE CHAIRMAN: --Mr. Campbell I believe.
5 We briefly canvassed all of the counsel, including --

6 MS. DEVAUL: Including Sandra
7 Bair-Muirhead for Treaty 3, NAN and OFAH.

8 THE CHAIRMAN: That's right, and also Mr.
9 Hunter I believe we canvassed as well. And all
10 counsel, with the exception of Mr. Edwards, could
11 attend and would find it more convenient for the
12 purposes of the procedural matters to have it heard in
13 Toronto.

14 MR. CASSIDY: Thank you.

15 THE CHAIRMAN: And for that reason we
16 felt, since Mr. Edwards also agreed that his comments
17 with respect to the procedural matters could be relayed
18 to the Board through Mr. Campbell or some other
19 counsel, we felt that it would be in the interest of
20 everyone to hold that one session in Toronto.

21 MR. CASSIDY: Thank you, Mr. Chairman.

22 THE CHAIRMAN: And we will instruct the
23 hearing liaison officer to make Mr. Hanna aware that he
24 will be expected to proceed following Mr. Edwards.

25 MR. FREIDIN: We start 8:30 on Wednesday?

1 THE CHAIRMAN: 8:30 on Wednesday because
2 we will all be coming back here Tuesday night.

3 Anything further to deal with at this
4 time?

5 MR. CHURCHER: Mr. Chairman, if I could
6 just ask for a point of clarification about the
7 following week. You would begin sitting at one o'clock
8 on the Monday?

9 THE CHAIRMAN: No, no.

10 MR. CHURCHER: The following week.

11 THE CHAIRMAN: The week after that?

12 MR. CHURCHER: Yes. That would be
13 October the 23rd, I believe.

14 MR. FREIDIN: That is what my book says.

15 THE CHAIRMAN: The Board has been
16 reviewing the timetable and there are a couple of
17 changes that we are going to have to announce; and,
18 that is, the week of October 23rd the Board will be
19 obliged to sit on the Monday, Tuesday and Wednesday.

20 That is one of these weeks where we would
21 request that counsel come up Sunday night, if possible,
22 so that we can have three full days. One of the Board
23 members is required to be elsewhere on the Thursday.

24 And the following week -- excuse us a
25 moment.

1 ---Discussion off the record

2 THE CHAIRMAN: The following week, which
3 is October 31st through November 2nd, we would be
4 sitting the Tuesday, Wednesday and Thursday as we
5 normally do.

6 We will be putting forth the schedule for
7 November and December early next week.

8 MR. CASSIDY: Mr. Chairman, just one
9 final matter. You provided us with a transcript of
10 your comments a while ago and the last words on the
11 transcript were: We hope the Jays are going to win the
12 American League. Are you prepared to indicate your
13 preference for the World Series which starts on
14 Saturday?

15 THE CHAIRMAN: After doing it last time
16 and seeing what happened, I will probably refrain.

17 MR. CASSIDY: Thank you.

18 THE CHAIRMAN: Actually now that the Jays
19 have lost, I am not sure that I care.

20 MR. CASSIDY: Thank you, sir.

21 THE CHAIRMAN: Okay. We will see you in
22 Toronto on Tuesday. Thank you.

23 ---Whereupon the hearing adjourned at 5:15 p.m., to be
24 reconvened at the Offices of the Environmental
25 Assessment Board in Toronto, Ontario, on Tuesday,
October 17th, 1989 commencing at 9:30 a.m.

